As Chief Justice of India

TO THE BEST OF MY MEMORY

P. B GAJENDRAGADKAR

Foreword
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TO

SHALINI

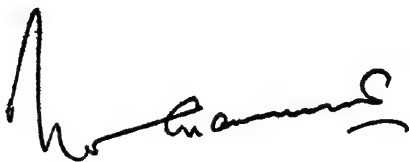
THE NANDADEEP OF MY LIFE

FOREWORD

It is with mixed feelings that I am writing this Foreword to Justice P B Gajendragadkar s autobiography It gives me a sense of fulfilment to discharge this duty but how I wish that Gajendragadkar was there to see it done! Then I would have also been somewhat free which in his absence I am not to make my assessment of this interesting account of the life of one of the most dynamic and colourful personalities it has been my good fortune to meet For friends of Gajendragadkar like me his death has been a personal loss too deep for words It is sad to think that he is no more and sadder indeed that he is not there to see the publication of a book which many of us were urging him to write during the last few years of his life Gajendragadkar loved to write as he loved to speak And he loved to talk as he loved to speak His unwillingness to write about himself was a mystery to us knowing especially that he was an extrovert and never liked to keep within the recesses of his heart thoughts which were uppermost in his mind He was an inveterate optimist and though not afraid of death he believed that he was going to live long enough to be able to present a sketch of his life He was in full possession of his intellectual faculties even when he was passing his last days in the shadow of death and his iron will to speak and write did not leave him until a few days before he bowed out of life It was apparent that, slowly but perceptibly he was racing against time This autobiography would have been vastly different both in form and content, if it were to appear three or four years before his death

Gajendragadkar's was a life of total dedication whatever be the task he undertook He belonged to a family of Acharyas which had distinguished itself by its erudition

and it is no exaggeration to say that the spirit of inquiry and scholarship did not leave him until the last flickering moments of his life He was a voracious reader though he seldom read for mere pleasure In fact I do not think he ever bothered to refresh himself with any kind of light reading Heavier the reading happier was he Literary frills and frolics had therefore no place in the scheme of his life Indeed he hardly ever interested himself in anything which was not ultimately geared to the pursuit of knowledge and learning Books on sociological and political theories law reform, the Gita and the Upanishads —these were his constant companions I and my wife had the privilege of barging on him and his wife Shalinibai at our sweet will without any prior appointment We have visited them at all odd times of the day but rarely do I remember an occasion when Gajendragadkar was not lost in reading some book or the other There would be a pile of books by his side and a few weeks later a new collection would take its place But as I have said he did not read for mere pleasure There was scarcely a book he read on which he did not make his own annotations and indeed the notings which he has made on the vast amount of reading he had done are a veritable treasure-house of knowledge I hope that someone like his son-in-law Ragha Jahagirdar will put that rich treasure to good use

Gajendragadkar was an accomplished public speaker Words came naturally to him and gifted as he was with a prolific memory he never made any notes to serve as *aides-memoire* He loved to speak extempore which of course is not the same thing as firing off a speech without pre-thought He used to close his eyes and sit for a while to gather his thoughts before he spoke He regaled his audiences with his exquisite command over the language his deep study and understanding of the subject on hand and his invincible logic One stream

of thought would follow another in an uninterrupted torrent of carefully chosen words like silver waves The magic of his words could only be compared with the magic of his personality Many people have experienced the former but I suppose only a few like me have had the good fortune to see so closely the inter-play of the various facets of his personality His life was a dome of many coloured glass

I came to know Gajendragadkar after I joined the Bar of the Bombay High Court in 1943 My uncle Baba who was a well-known lawyer in Poona my father and father-in-law knew Gajendragadkar though in a purely professional capacity Gajendragadkar who was a tower of strength to struggling juniors took a fancy for me and gave me great encouragement In fact quite a few juniors of those days who are occupying positions of eminence at the Bar today owe their comparatively quick rise in the profession to the interest evinced in their careers by Judges like Gajendragadkar and M C Chagla Their interest in the future of junior members of the Bar arose from their interest in the future of the Bar It is wrong for that reason to suppose that either Chagla or Gajendragadkar had any favourites at the Bar And what is remarkable is that apart from the interest which they took in the juniors as lawyers they had no personal relationship of any kind with them It was not until fourteen years after I joined the Bar that I went to Gajendragadkar's house That was a few months before his elevation to the Supreme Court in 1957 Gajendragadkar was a man of many parts but if I am asked to pinpoint where he excelled I will not mention him as a Vice-Chancellor of the Bombay University nor indeed as a Chairman of the Law Commission where he did monumental work, nor for the matter of that as an orator which he was of a consummate order I will say unhesitatingly that he excelled

in the art of writing judgments The lucidity of his style the precision of his expression and the force of his logic were peculiarly his own almost impossible to emulate These had not come naturally to him even as good health had not come naturally to him He cultivated these qualities as he cultivated his health He had evolved a code of discipline which governed the whole sweep of his life Indeed Gajendragadkar s life is an example of what one can achieve by dint of hard work and a sense of dedication His favourite message for autographs was "Work is worship"

All good things have an end and though Gajendragadkar's death has created a void in public life and in the lives of his friends death came to him as a relief Shalinibai died a year before him and after her death he lost the zest for living He was tormented by a sense of loneliness in spite of all the care that his daughter Sharad took of him But even then what a tribute to his sense of dedication that he finished writing a learned introduction to the first volume of Upanishads consisting of *Isa* and *Kena* and the editing and translation of six more Upanishads The book on Upanishads" published under the auspices of the Bharatiya Vidya Bhavan is a living monument to Gajendragadkar s scholarship And Gajendragadkar was nothing if not a scholar

NEW DELHI
January 25, 1983

Y. V Chandrachud

PREFACE

My role in persuading Mr P B Gajendragadkar to write his reminiscences forming this book has been correctly described by him in Chapter 1 Mr Gajendragadkar had lived a very rich and full life filling several offices with great distinction In the course of his public life he had witnessed many events had met several distinguished and other persons and had taken part in many important projects Though he had not kept any notes or diary touching upon the events in his life he has been able to recall all things about which he has written in this book with great precision For a person with such a graphic memory as Mr Gajendragadkar who could recite passages from books which he had read ten twenty or thirty years ago the task of writing his reminiscences was not difficult His memory has not failed him and it can be safely said that there is no inaccuracy in the account of any of the events given by him in this book

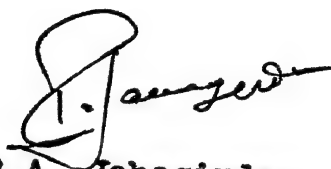
An aspect of the book which should be noted is that it is a first-hand account of the events things and persons and no part of the book is based upon hearsay There are no tales based upon gossip whatever Mr Gajendragadkar has written is based upon his personal knowledge and is not borrowed from any report given by a third person I have taken the liberty of clarifying certain things and commenting upon some matters on which Mr Gajendragadkar has spoken Those comments of mine are mentioned in the footnotes with my initials

Mr Gajendragadkar was a Judge for a period of 23 years and it was inevitable that his mind would be crowded with memories of judicial life He was also in the Bar for

nearly 17 years and naturally he has spoken about the Bar also In the light of the current debate on the transfer of Judges, the readers will find it interesting to read what Mr Gajendragadkar has mentioned in Chapter 12 and in particular from page 165 onwards Mr Gajendragadkar s alarm at the judges hobnobbing with the members of the Bar and the litigants finds its place in the book on page 137 onwards in Chapter 11 Though Mr Gajendragadkar disapproved of the judges accepting dinner parties from the members of the Bar and others especially in luxury hotels, he advocated that judges should take part in social educational and cultural activities This view of his and his other views dealing with Law Lawyers and Judges are to be found in Chapter 21

It would be inappropriate for me to make any comments upon the material contained in the book However some explanation for the absence in this book of the fluent eloquent and forceful language, which people normally have come to associate with Mr Gajendragadkar is necessary The dictation of the book was undertaken when his work on the Upanishads' project was interrupted In the meantime Mrs Gajendragadkar was suffering from a very serious illness which ultimately resulted in her death on April 20 1980 Mr Gajendragadkar himself as he has mentioned was living in the shadows of the evening of his life Part of the book was written after the death of Mrs Gajendragadkar These factors are largely responsible for the subdued tone in which the book is written The death of Mrs Gajendragadkar was indeed a very severe blow to him He has described his total dependence upon her in the chapter which he wrote after her death The intensity of the mutual love and affection between them had not diminished one bit even after 55 years of married life It was fascinating to watch them living together,

growing old gracefully and sharing in a magnificent way all that they could share in this world The shadow of Mrs Gajendragadkar's illness and later of her death therefore inevitably fell upon some chapters of this book

The typed manuscript of the book was not read by Mr Gajendragadkar who therefore did not make any corrections in the same I have corrected the manuscript In December 1980 Mr Gajendragadkar was in the hospital for nearly a month due to a fracture Later for another fortnight he was again hospitalised in April 1981 Thereafter on May 2 1981 he was suddenly found unconscious in his bed and he died on June 12 1981 without regaining consciousness except for a couple of days It is unfortunate that he did not live to see the publication of his autobiography This book is in one sense an obituary on him written by himself As the reader will notice the book is totally free from malice towards any one Apart from this Mr Gajendragadkar had no complaint against the world He has not 'cut down' any one to his size though he has not forgotten to mention some of the unsavoury events

In accordance with his desire the book is being published by the Bharatiya Vidya Bhavan The difficulties of publishers and printers in this country are many and therefore the book could not be brought out as early as one would have liked Attempt is being made to get it published on February 11 1983 which is the 72nd birth anniversary of Mrs Gajendragadkar This would be an appropriate day because the book is dedicated to her in accordance with again Mr Gajendragadkar s desire

In seeing the book through the press Mr S G Tolat has played a major part despite his own old age and somewhat indifferent health. Mr. Tolat has carried out this

work not only because of his association with the Bharatiya Vidya Bhavan but also because of the high esteem in which he held late Mr Gajendragadkar As the reminiscences themselves show Mr L S Easwaran has taken down the entire book as he has taken down the manuscript of the Upanishads dictated by Mr Gajendragadkar Mr Easwaran has also supervised the proof reading of the book and has in addition prepared the index The contribution of both Mr Tolat and Mr Easwaran towards the publication of this work, therefore, is inestimable

BOMBAY
January 27, 1983

R.A. Jahagirdar.

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Chapter I

INTRODUCTION

I retired as Chief Justice of India on 6 March, 1966 and returned to Bombay to take over as Honorary Vice-Chancellor of Bombay University Some publishers and many friends suggested to me that I should write my reminiscences My polite, consistent and firm reply to all of them was that I was still looking forward to do some good work and I did not agree that the stage had arrived in my life when I should look back I did not either think that I had achieved such distinction in my life as the younger generation would like to be informed about Thereafter having worked in the University for six years (1966-71), I went to New Delhi in September 1971 at the personal invitation of Prime Minister Indira Gandhi, conveyed through Law Minister H R Gokhale, to accept the honorary chairmanship of the Law Commission The tenure of the post was three years, but I did a second term On return to Bombay in August 1977, I decided that I would lead a quiet life My friend Mr S Ramakrishnan, Executive Secretary of the Bharatiya Vidya Bhavan, Bombay, came to me with an invitation of the Bhavan to be the General Editor of the Bhavan's project to bring out a new edition of the ten principal Upanishads The plan was that I should write the general introduction to the series, edit and translate the ten Upanishads and make my comments in the light of what I regarded to be the basic philosophical outlook and message of these inspiring works The project would include the *bhashyas* (commentaries) written by the four Acharyas, namely Sankara, Ramanuja, Vallabha and Madhva, and

the translation of a commentary by an eminent representative of the Acharya s school where the Acharya had not written his own *bhashya* on a particular Upanishad so that the reader would get all the relevant literature at one place Eminent oriental scholars volunteered to associate themselves with me, each one translating a different *bhashya* of his choice This is how the *bhashyas* of the four Acharyas were assigned to four different scholars The work involved in the execution of this project in the company of esteemed oriental scholars gave me great satisfaction and brought, in the words of Schopenhauer, solace to me in the evening of my life I received active assistance from Mr R A Kashyap during the early stages and thereafter from Prof R T Vyas Stenographers from the Bhavan were assigned to this work and the last one to be assigned to this scheme was Mr L S Easwaran, who stayed the longest

As this work was going on, I had already written my Introduction and sent it to the press along with the first volume consisting of *Isa* and *Kena*[1] In collaboration with Professor Vyas, I completed my part of the work in regard to four more Upanishads[2] Thus out of ten Upanishads, my work with regard to six of them was already over and I was looking forward to finishing my assignment in six to eight months by completing the translation and annotation of the four remaining Upanishads Man proposes and God disposes Prof Vyas, who generally keeps good health, suffered a mild heart attack He has now completely and fully recovered and has been discharged from hospital, but as a measure of caution, the doctors have advised him not to overstrain himself That is why his collaboration with me in regard to the four remaining Upanishads had to be suspended for a time

1 Published in January 1981 (*R A J*)
2 In fact, he completed SIX more Upanishads (*R.A J*)

When my son-in-law, Justice Raghavendra Jahagirdar, learnt about this unfortunate development, he came to me and earnestly asked me to consider the plan of writing my reminiscences He knew my views, but said "It is no good trying to be too humble or unduly modest After all, you have had a long and active career covering many fields Your reminiscences would be of considerable interest to many" I was somewhat impressed by his plea and I began to consider the proposition seriously

'After all,' I said to myself, 'I am now treading the earth cautiously, my movements are slower and my life proceeds in pauses in the late evening of my life Why not try to look back and recall provisionally my reminiscences before I decide whether they should be printed or not?"

As I had never thought of writing my reminiscences, I had not kept any contemporaneous record of the important events in my life, nor have I kept copies of the numerous letters which I wrote to several persons not only in India but outside Neither had I preserved the letters received from friends in India and abroad I realised that I had to depend precariously on my memory In my long, active life my memory has served me well However loyal it may be, when asked to stretch itself over a period of nearly sixty years, it is likely to commit lapses and so inaccuracies may creep in and omissions of important events or references to important persons might occur in my narration For these deficiencies I express my regret at the very outset

Chapter 2

OUR FAMILY

Raghavendracharya,[1] who was a profound scholar in *Vyakarana, Vedanta, Nyaya, Mimamsa* and *Alankara*, stayed with his sons and other members of his family at Gajendragad, a small hamlet then in the dominion of the Nizam He was admired and almost adored for his great learning and high moral character The family owned some land nearabout Gajendragad which yielded income sufficient to maintain it just below the middle class level economically, but it was very rich in scholarship and character which were and continue to be its main assets The family drew its surname from that village as is common in Maharashtra, Karnataka and parts of South India

Raghavendracharya s house was in effect a *pathashala* Many students from Karnataka came to stay with and study under Raghavendracharya in one branch of learning or other The life of Raghavendracharya was devoted to worship and meditation on the one hand and teaching on the other Generations of students stayed with the

1 The passion for learning in the Gajendragadkar family can be appreciated when one briefly notes the early life of Raghavendracharya whose grandfather, Sudhindraswami, was the head of the Madhva-peeth years earlier Raghavendracharya was only one year old when his father died His early education was handled by his mother and later by his uncle Later he made his way to Pandharpur where for several years he studied under Vithalopadhyaya a great pandit of that time Later he moved to Pune where Neelkanthshastri Thatte looked after both the spiritual and temporal needs of Raghavendracharya who had in the meantime married After completing his education with Neelkanthshastri, Raghavendracharya returned to Gajendragad His reputation as a scholar must have travelled to Satara in all probability from Pune (*R A J*)

family, completed their course of education and went home, to become in their turn centres of learning wherever they lived

An unexpected event disturbed this serene life of the family in the early twenties of the nineteenth century A messenger came from Pratapsinha, Maharaja of Satara, to Raghavendracharya conveying the Maharaja s earnest request that the *pandit* should move to Satara with his family and be the *Rajpandit* at the durbar of the Maharaja All his needs would be looked after in every possible way Raghavendracharya asked for some time to consider the Maharaja's invitation because, if he accepted it, the life he had been leading would be virtually uprooted The messenger would not leave without securing Raghavendracharya s acceptance Raghavendracharya consulted the members of the family, considered the proposal himself and felt that the request from Satara was virtually a call of destiny He accepted the invitation, made the necessary arrangements for looking after the family land nearabout Gajendragad and moved with all members of the family to Satara

The messenger had been told that the family would need a house big enough to accommodate students who would come to Raghavendracharya for study and a few lands which would produce rice and which contained mango trees Like a true Kannadiga family, their diet mainly consisted of rice and *sar* The family received a large house and some lands roundabout Satara The house still remains with the family Thus a Kannadiga family became Maharashtrian in every sense

Among Raghavendracharya s sons were Narayanacharya and Wamanacharya Waman was a brilliant scholar and his father was very proud of him Whom the gods love, they die young Waman died very young

and that was a shock which the old Raghavendracharya could not stand He immediately made up his mind to leave Satara and went to Brahmavarta There he spent the rest of his life in worship, meditation and teaching He never came back

Narayanacharya, a profound scholar in all branches of Sanskrit learning, carried on the family tradition In the family house, the outer portion on the first floor was reserved for students coming all the way from Karnataka to Satara These students chose their subjects and received their education from Narayanacharya They came from poor families and followed the tradition, which was then popular, of students going round the houses of neighbours asking for daily food (ओ भवति भिक्षा देहि). The response was both prompt and adequate as it was known that they were staying with Gajendragadkars If ever there was any deficiency in the food received, the family cheerfully and adequately made up for it On all important and festive occasions the students dined with the family In fact they were treated as members of the family and they loved all the members of the family as though they themselves belonged to the family This *pathashala* must have sent out many scholars of Sanskrit to different places in Karnataka This tradition continued until the time of my father

After Narayanacharya began the years of Anantacharya and he was followed by Raghavendracharya *alias* Balacharya, my father We called him Anna The belief in the family was that the old Raghavendracharya had been reborn in the family as our father This belief was founded on the fact that Anna was as learned as the old Acharya and as saintly in character

Father's life was highly regulated He used to get up early in the morning (ब्राह्मे मुहूर्ते) and, after a cold

bath, all the year round wherever he was, he would devote two or three hours to worship and meditation Then would follow a course of teaching the students and the midday meal After a rest for half to an hour, the second session of teaching began and went on till evening In the evening, father would go to the temple of Ganapati, which is outside the town This practice was followed with unfailing regularity Father s life was a typical ascetic life and as such it was admired by all those who came to know him

My mother's name was Laxmi though she was called Anasuya The name Anasuya suited her very well because she had no trace of envy, jealousy or pride in her heart She belonged by birth and by marriage to very reputed families, yet she was humility personified Father was, like the original Raghavendracharya, other-worldly, engrossed in worship, meditation and teaching He rarely took the *pothi* in hand when teaching because his *vidya* in all branches was *mukhastha* and did not need the help of the text in hand He was completely indifferent to all mundane affairs and my mother managed the fairly large household, not a very easy task Mother took the help of my two elder brothers when they came of age Mother was not highly educated, but she was spiritually elevated She had learnt one lesson from father and that was derived from the two boons which Kunti had asked from Sri Krishna at the end of the Mahabharata war When the fighting was over and the Pandavas and their mother, Kunti, were talking about things of the past, Sri Krishna said to Kunti "Ask for two boons Kunti replied "Lord, what boons can I ask for, except your blessings which we have enjoyed in your company all our lives ?" Sri Krishna however insisted and Kunti yielded and said in a characteristic mood. 'If you want to give me two boons,

my request is विपद सन्तु न शश्वत । मनो वो महद्वस्तु च ॥ "Let adversities always confront us, and let our minds remain noble, generous" Mother truly believed in the wisdom of Kunti's request and practised Kunti's philosophy all through her life The family was never rich, but every member of the family was taught to keep his or her mind broad and generous This was the precept which mother held before all of us We were six brothers and three sisters — Narasimhacharya (Dada), Setumadhavacharya (Bapu), Ashvatthamacharya (Appa), Keshavacharya (Bhau), myself and Srinivas, and sisters Venu (Akka), Padmavati (Tai) and Usha

Father was quite modern in his social outlook For marriages in our family the *patrika* (horoscope) was never required, it was only the *gotra* that was considered Father read Marathi newspapers regularly and was well posted in the affairs-of the country Though father did not attend to the management of the family and its affairs, he undertook one responsibility and that was to go to the villages in Karnataka where we owned some lands In those days of slow and difficult travel, it meant father's absence from the house for three to four months Wherever he went, he was received with regard and people pressed him to stay with them longer than he intended That was how his travels took three to four months Our representatives in the villages where we owned lands were devoted to the family and there was no difficulty about collecting the rent The tenants looked on father as a saint Usually these travels included a visit to Tirupati to have *darsan* of the Lord of the Seven Hills Who is our family deity My thread ceremony was performed at Tirupati

Dada and Bapu had been trained in the traditional learning of the family by father After they came of age,

they looked after the affairs of the family, always in consultation with mother Later, Dada specialised in Ayurveda and was one of the founders of the Aryangla Vidyalaya at Satara Today this institution occupies a prominent place in the field of medical education in western Maharashtra It runs an Arkashala which produces Ayurvedic medicines Dada was one of the founders of the institution and taught in the institution's school and devoted a good part of his time to the management of its affairs

Bapu chose government service, was appointed a *shastri* in a government high school and was later promoted as *shastri* in the Karnataka College, Dharwar He was a brilliant speaker in Sanskrit and Kannada and his discourses (*pravachanas*) used to attract large audiences in Karnataka

Appa wanted to strike a new path and he pressed mother to persuade father, Dada and Bapu to permit him to enter the government high school at Satara There was considerable discussion in the family on this point The feeling was that if Appa joined an English school, it would be going against the tradition of the family, but mother, though not educated in the traditional sense, was wise enough to foresee that English education was becoming a necessity and it would be idle and indeed unfair to deny an intelligent boy like Appa the opportunity to receive English education Mother's counsel prevailed and Appa joined the Satara English High School

Appa had a brilliant career He stood first at the B A degree examination in the University and secured many prizes and scholarships After his M A degree from Deccan College, Pune, where he was appointed a Dakshina fellow, Appa was selected as a professor of Sanskrit in the Karnataka College at Dharwar when it opened Appa was a very popular professor He spoke

eloquently and had the gift — an asset for a teacher— of explaining a difficult or obscure text in smooth, lucid and captivating language In those days Sanskrit occupied a prominent place in the university curriculum and the professor of Sanskrit held a position of prestige From the Karnataka College, Appa was transferred to Elphinstone College, Bombay, where also he made a name for himself After he retired, he accepted Dr B R Ambedkar's invitation to be the first Principal of Siddharth College which Dr Ambedkar had started in Bombay Appa was very much interested in physical culture For several years he enthusiastically worked as the commander of the University Training Corps He was one of the founders of the Swastik League, and active in the Brahmana Sabha and took part in many social activities

Dada, Bapu and Appa all died before they attained sixty years of age In the case of father, we celebrated his sixty-first birthday by performing *Shashtyabdapurti* in a solemn manner It was attended by all relatives of the family Unfortunately soon thereafter, he died of heart failure He had left Satara by train to go to Solapur where Bapu was working as a *shastri* in the high school One Mr Shinde, who had been travelling with father and was very much impressed by his personality, got in touch with the Station Master at Wathar and secured the necessary permission to take down father's body on the platform and removed it to our house at Satara What Shinde did for our father in the last moments of his life made him virtually our brother We treated him as such and he heartily responded

Mother had predeceased father by three years She had rendered great service to the family by persuading Dada, Bapu and father to allow Appa to join the English school It was Appa who helped Bhau and me to a

considerable extent and provided a model to us In fact Appa virtually acted as a pathfinder and a pace-setter for all of us Appa's death was sudden He had a heart attack while he was taking his early morning walk along with his son, Bal He complained of some pain in the chest but did not realise that it was a heart attack However the pain became intense and Bal placed him in a horse carriage Appa insisted that he should be taken not to his residence, but to the Swastik League which, he said, was his *karmabhoomi* which, alas, turned out to be his *maranabhoomi* because it was there that he breathed his last

The volunteers of the Swastik League and their commandant placed Appa's body on a big table to enable people to pay their homage to him Hundreds of citizens, men, women and students, went round the body with tears in their eyes and laid wreaths The funeral procession, which was led by the volunteers of the League, was joined by a very large number of people When it reached the cremation ground on Queen's Road, there was hardly any room for anyone to stand Such was Appa's popularity in all the communities in the city It was a moving, spontaneous homage to a prominent educationist who had devoted his energies as much to education as to social service

Bhau followed the tradition of the family in one sense After graduation he became a teacher in a government high school After some years he left service, took to law and practised at Satara He had a fairly good practice but he was more interested in writing on different legal subjects in Marathi for the education of laymen These articles became very popular

Srinivas, who was younger than I, was the most brilliant and mother was looking forward to the day when

he would add to the name of the family But alas, he died very young His death and the death of Akka were the two shocks which my mother suffered in her life Akka married Reddy of Wai who was a teacher in a government high school Unfortunately some time after her marriage, she died

Padmakka (Tai) was married to Anantacharya Adya of Bijapur He came down to Satara with his wife and children and stayed near us in order to learn from father During the period that he stayed at Satara, he worked diligently and father spoke about his son-in-law in terms of affection and admiration On his return to Bijapur, he specialised in *Ayurveda* and wrote several books on it He was very much respected and honoured in that part of the country for his learning as well as his integrity and character His youngest son, Raghavendra, is my son-in-law, now a judge of the Bombay High Court Tai died in 1960, two years after Raghavendra s marriage Anantacharya died in 1979 at the age of 95, mourned by hundreds of his admirers in Karnataka

Usha was married to Prof S N Banhatti After a distinguished academic career, he became a professor of Marathi in Elphinstone College, Bombay Later he shifted to Nagpur where he was appointed professor of Marathi in Morris College He resigned this post and started a newspaper in Marathi called *Savadhana* The paper, though well conducted, was not financially successful and had to close He then shifted to Poona where he carried on his literary activities He was a Marathi writer of recognised merit He has written several books in chaste, fluent language and everyone of them was based on a study in depth of the subject dealt with Lately he had undertaken the somewhat arduous task of editing *Jnaneswari* and, for that purpose, with typical thorough-

ness and zest had collected a large number of manuscripts which he was examining critically with the printed text of *Jnaneswari* Usha died in December 1971 and her husband, who did not find interest in life thereafter, followed her within a couple of years

Since I reached the age of understanding, I have been ever grateful to Providence that I was made a member of this illustrious family After I joined the Bar, I took a solemn vow that throughout my life I would do nothing unworthy of the high spiritual and moral standards of my forefathers In all humility but with perfect sincerity and honesty, I can claim that I have tried my best to keep my vow all these days That is my tribute to my noble ancestors

Chapter 3

EDUCATION

I passed the matriculation examination in 1918 from Satara High School and went to Karnataka College where Appa was professor of Sanskrit I stayed two years in that college on a scholarship In 1920 I joined Deccan College in Pune

In my high school days we had a group of friends S K Ksheerasagar, Inamdar, Mhaskar and Kulkarni Ksheerasagar joined me at Dharwar for the first year Then he migrated to Pune and we parted company

यथा काष्ठ च काष्ठ च समेयाता महोदधौ ।
समेत्य च व्यपेयाता तद्वद् भूतसमागमः ।।

Just as two logs of wood come together for some time on a sea and then drift apart, so do human beings meet together, form friendship and then by chance or circumstance they disperse, never to meet again This happened literally so far as Ksheerasagar and I are concerned

Ksheerasagar later became a professor of Marathi and a well-known Marathi writer He evolved a constructive, positive philosophy of criticism, which he expounded in brilliant essays in Marathi They have a flavour and content of their own, and a philosophy to expound, they have given Ksheerasagar a place of prestige in the literary world of Maharashtra

In December 1977 I had gone to Pune as President of the Shikshan Prasarak Mandal to welcome Prime Minister Morarji Desai on the occasion of the Golden Jubilee of the society I made a short speech in Marathi without using

one English word In spite of indifferent health, I attended the function under pressure from my friends, because I had been the President of the soceity for many years I had gone to bed that night after dinner Suddenly, the operator rang me up and said there was a call for me When I took it, I heard Ksheerasagar, the same familiar, friendly, warm voice, congratulating me on my speech and asking me firmly, as an intimate friend alone could do, not to take any more speaking engagement because I appeared to be in indifferent health More than 55 years had elapsed since I had heard Ksheerasagar's voice Then he sent me a copy of his autobiography and I sent a reply in appreciative terms This is no doubt a digression but I thought I owed it to myself to mention this incident[1]

When I joined Deccan College, Karmarkar who had become our intimate friend at Dharwar also came to Pune and joined the same college During the two years I was in Dharwar, we had formed a small group of close friends consisting of myself, Karmarkar, Mudholkar and Shenolikar In Deccan College, Diwan from Kolhapur joined us and the three of us—Karmarkar, Diwan and myself—formed a closely knit group and remained together for six years thereafter Diwan was almost a mathematical genius Simple in his habits, unassuming in his manners, not very impressive in personal appearance, he was logical, strong in his views, soft in his temper and, on questions of principle, firm as a rock He had a distinguished academic career, was a professor at Elphinstone College and taught Mathematics in such an easy and lucid manner that his students adored him Then he developed

1. After Gajendragadkar's death, Mrs Ksheerasagar recalled this incident in a letter written to Gajendragadkar's elder daughter and also gratefully remembered Gajendragadkar's letter to her after Ksheerasagar's death which had taken place a few months earlier (*R A J*)

expertise in Actuarial Science and, after retirement, he taught the subject at a local college and gained name as a Consultant Actuary

Karmarkar had an imposing personality, was very eloquent, very intelligent and very warm-hearted He took to Law and practised at Dharwar and, as was to be expected, he made an impression on the courts, lawyers and litigants alike within a short time and it looked certain that he would reach the top at the Bar very soon But destiny intervened He gave up the Bar and joined the civil disobedience movement He was elected to Parliament and was a Minister for two terms He had also gone abroad as a member of the Indian Delegation to attend a session of the United Nations General Assembly After an active political life, he is now leading a quiet life at Dharwar doing historical research pertaining to Karnataka

All the three of us secured First Class in our B A and were appointed *Dakshina* Fellows in 1922 In 1924, we all appeared for our M A I secured a First Class with Sanskrit and English and won the Jhala Vedanta Prize and the Bhagwandas Purshottamdas scholarship [2] A First Class at M A with Sanskrit and English was unusual in those days My success attracted attention in the academic world

Karmarkar, Diwan and I joined the Poona Law College which had been started in the same year under the leadership of Prof J R Gharpure Diwan however was not serious about Law and took an assignment of teaching Mathematics in the new Poona Law College Karmarkar and I took our degrees in Law in 1926

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2 Gokuldas Jhala Vedanta prize for securing first rank among those who answered in Sanskrit the paper on Vedanta, Bhagwandas Purshottamdas Scholarship for securing first rank in Sanskrit as a whole (*R A J*)

In Deccan College, Prof Belvelkar made a great impression on my mind He was one of the best Sanskrit scholars of his time and his lectures on the Rigveda were a treat to hear The only difficulty about him was that he was not communicative When he lectured, he rarely looked up and faced the students though the M A class consisted of not more than twenty students for the Rigveda lectures Dr Belvelkar was extremely conscientious and as soon as it was known that he was appointed Examiner for M A, he stopped his lectures and refused to meet any of us even to help solve our difficulties

Another teacher who made a profound impression on my mind was Shridhar Shastri Pathak He was a very learned Sanskrit scholar and he taught us *Dharma Shastra*, in which he showed a special aptitude What was remarkable about Pathak Shastri was that he was very progressive in his views and openly advocated the abolition of untouchability While talking to his orthodox friends he used to say that, while untouchability was not justified on merits, it should be abolished at least as an *Apad-dharma* (आपद्धर्म) His argument was brushed aside by his colleagues who asked him What is *Apad* ? आपदेव न हि. ' So completely unaware were these pandits about the contemporary trends of thought as well as agitation in the minds of the citizens At Varanasi where Sanskrit pandits met at a conference to consider this problem, Pathak Shastri tried his best to persuade his colleagues to declare against untouchability but failed, and he returned to Poona diasppointed and dejected Later he became a *sanyasi* and lived on the banks of the Narmada I had never seen a progressive Sanskrit pandit like Pathak teaching in colleges in those days Pathak Shastri always used to tell us that a dispassionate study of the *Dharma Shastra*, *Upanishads* as well

as the *Bhagavad Gita* would convince anyone that untouchability could have no place in the Hindu way of life, and that Hindu philosophy was progressive, dynamic and tolerant It was not a dogma but a forward-looking, philosophic way of life I learnt about this aspect of Hinduism from Pathak Shastri

At Deccan College Prof Turnbull used to teach us English He had a typical habit of solving difficulties raised by students He would ask after his lecture was over if any student had any difficulty and, when any student put forward his difficulty and pleaded that he had not understood a particular passage explained by the teacher, Turnbull would innocently repeat exactly what he had said during the course of his lecture and would ask the questioning student in his peculiar nasal voice 'Does that make it clear now? The class would roar with laughter, but Turnbull never saw the joke !

Ganapati festival was an important occasion in Deccan College One year the procession had moved from the hostel to the Boat Club where the images had to be immersed Some incident had taken place on the road and it was rumoured that the police were going to search the hostel to investigate the incident We immediately reported this rumour to the Principal It was then night time The Principal came out of his bungalow and stood at the gate of the College hostel As expected the police came, but the Principal warned them that he would not allow them to enter the hostel, because he knew that his students had done nothing in the matter, and he added 'If you like, I will get in touch with the District Magistrate or the District Superintendent of Police and ask both of them to stop this search The police officers saw that the Principal meant business, and they quietly withdrew The students whole-heartedly applauded the Principal for

taking an interest in the matter Otherwise police investigation would have meant a lot of trouble to some of us

One special feature of Deccan College was its Boat Club It was great fun to get into *Hansa* or *Raja*—two small canoes—and take them to the Holkar Bridge There were bigger boats as well and an annual regatta was a regular and prominent feature of the College life In those days of political struggle, our European Principal would never object to any politician coming to address the students He would only insist that he would like to preside so that nobody from the Government side could complain that something objectionable had been allowed to be said Subject to this condition, we were able to invite Chittaranjan Das, Motilal Nehru, Rajaji and a large number of political leaders and we had the pleasure of hearing their speeches, which were followed by questions and answers The meetings invariably ended with a vote of thanks proposed by the Principal who presided and began the proceedings by introducing the speaker in suitable terms

During my stay at Deccan College, there was a public meeting at Poona I do not recollect now what it was about, but N C Kelkar presided over the meeting attended by a very large number of students from all the city colleges I was one of the speakers at the meeting and I spoke in English Apparently the speech impressed the audience and even the President As I closed my speech and was going back to my seat, Kelkar whispered in my ears 'Young man, will you come and meet me one of these days?" I said it would be a great honour I met Kelkar He praised my speech, its substance, its elegance and my composure on the platform He then said 'I have called you here because I want to enquire whether you would like to join the *Kesari* institution after you take your M A degree and look after the *Mahratta* ' I said

"Sir, your invitation is a great honour but I regret I cannot accept it I have decided to go to the Bar ' 'Very well then,' said Kelkar and added, warmly, 'all good luck to you"

Before I conclude my reminiscences about Deccan College, I would like to mention one small incident which then appeared to me to be very important As a *Dakshina* Fellow of the College I was in charge of the Annual Social Gathering and we had decided to invite M A Jinnah to be our Chief Guest I wrote to Jinnah and got a prompt reply inviting me to meet him in Bombay So I went to Bombay, stayed with my brother and went to see Jinnah at his residence It was a magnificent bungalow, extremely well furnished and very impressive A peon was standing at the entrance He asked me what business I had with the Sahib His guess was that I was a student from the mofussil and perhaps wanted to see Jinnah for financial help I resented the manner in which he questioned me and told him not to bother as to who I was and what my business was with his Sahib but 'go and tell your boss that a student from Deccan College, Poona, has come to see him" He went in and conveyed to Jinnah my message and Jinnah asked him to take me to his chamber immediately When the peon came back, his appearance and manners had changed and he was all politeness When I went into Jinnah's office, he asked me to take a seat, gave me a cup of tea, was very polite, enquired about me and my career and asked a few questions about Deccan College, its history and tradition and the nature of the function he was expected to address I gave him the information he wanted Jinnah came to see me off to the entrance of his bungalow When Jinnah came to Pune for the function we put him up with the Principal and, throughout his stay, he was polite, friendly and

communicative We all *Dakshina* Fellows were dressed in the traditional Deccani style with *dhoti,* shirt, short coat and cap on the head Jinnah was immaculately dressed in the western style and we must have struck him as village boys having come to receive education at Deccan College But he did not disclose any such feeling and treated us with the utmost courtesy Jinnah was then a great man, very popular and was known for his imperious manner He had a very lucrative practice at the Bar That is why my meeting with him and subsequent contact with him when he came to the college was a pleasant surprise After he spoke, I proposed a vote of thanks When the function was over, he shook hands with me and said Young man, you made a very good speech indeed' I thanked him for his kind words

Chapter 4

SHALINI

I was twenty-four when I joined the first LL B class after doing my M A and going by the standards of those days, I was regarded as overdue for marriage Proposals used to come from different people Dada would receive them and pass them on to me I did not want to think of marriage until I completed my LL B and started practising But neither Dada nor Bapu agreed to this plan and, in fact, I did meet one or two girls as was customary in those days This experience shocked me and it seemed to me to be extremely derogatory to the personality and dignity of a girl that any young man and his friends and relatives should see her to find out whether she was eligible to be chosen as the bride My mind recoiled in disgust from this custom and I told my brothers accordingly As Dada continued to press me, I started considering the problem seriously and without the slightest hesitation and almost instinctively, I came to the conclusion that I should choose Vatsala as my partner in life Vatsala s parents lived near us and I had known her almost from childhood Usha, my sister, was my confidante and she whole-heartedly supported my decision She then asked me whether she could convey my decision to Vatsala, and I said 'You may, but warn her to keep it all to herself for some time' When I learnt that Vatsala's father was seriously looking for a son-in-law, I was desperately keen that Vatsala should have no occasion to be exposed to the derogatory experience of meeting anybody else in this context So I wrote to Dada politely but firmly conveying my decision to marry Vatsala and requested him to

communicate the same to Vatsala's father Mama was transported with joy when Dada told him that his son-in-law was knocking at his door and was asking for the hand of his daughter Vatsala for his partner This fact was duly communicated to my other brothers and all other relatives and it was accepted as a fact in view of my determination The result was that Vatsala entered my life on 31 May 1925 With her concurrence I followed tradition and, at her suggestion, chose Shalini as her new name when she entered our family as my wife Since 1925, ours has been a very intimate, understanding and happy partnership Shalini has stood by me all the time and carried on the responsibilities of conducting all my affairs without any help from me

Shalini was studying in Karve s *Kanyashala* at the time of our marriage, but she did not have the benefit of college education She is an entirely self-educated person, well-informed, knowledgeable, with balanced views on all relevant subjects and basically wise, humane, generous and warm-hearted I have taken all the important decisions in my life only after consulting her If she said 'yes', I said 'yes , if she said 'no , I said no'

Like my father, I am not interested in mundane matters and it may surprise many readers when they are told that in all my long life I have not gone to any shop alone to make any purchase at any time Shalini, who is the guiding spirit of the family, has managed all household affairs including financial matters and has left me absolutely and completely free to attend to my profession at the Bar and later my duties as Judge when I was elevated to the Bench

I have two daughters, Sharad and Asha. Sharad, who is an M D of Bombay University, has been working with the Bombay Hospital for more than twenty years Several

medical friends have told me that by her clinical judgment and operative skill, devotion to duty and cheerfulness, she has satisfied the expectations of her *guru*, Dr Shirodkar who was a doyen among the gynaecologists of Bombay and had received recognition from all over the medical world Sharad has married Raghavendra Jahagirdar who is now a Judge of the Bombay High Court My other daughter Asha is an artiste by temperament and has achieved excellence in embroidery work, including batik She is married to Dr Sanjay Kirtane of Pune In one word Shalini has been the *Nanda Deep* in my life, and thanks to her I have found my way well-lighted, and so has every one of the younger generation who has come in contact with her

Chapter 5

LAW COLLEGE

In my time the Law College in Pune had no build ing of its own and we used to meet in the morning at the amphitheatre of Fergusson College We had a distinguished staff of practising lawyers as our professors and our Principal, J R Gharpure, was a saintly person whom everyone admired Gharpure was a good man though he was not a successful professor He was the author of *Hindu Law,* a subject he knew very well because he was familiar with all the Hindu Law texts in Sanskrit But his expression was not as good as it should have been The simplicity of his character, his kindness and his childlike innocence which shone on his face endeared him to everyone of his students There is a joke about Gharpure s inability to find a suitable word on one occasion He was conveying to the class the news that the University examination of the Second LL B had been postponed Naturally everyone was happy Gharpure concluded his lecture by making a statement . "Gentlemen, I am very happy to tell you that at the last meeting of the Syndicate of the Bombay University, it has been decided that the Second LL B examination " and then he obviously struggled to remember the word 'postponed', but could not find it He repeated "your examination is ' and then made a gesture of his hands to convey 'postponed' Everyone enjoyed the comic scene

Shingne and Bhopatkar were very popular professors One knew the art of keeping the students attentive by teaching the subject in a light-hearted manner and

introducing personal anecdotes in the process, the other believed in a consistent exposition of the law delivered in good voice and attractive English with precision and logic

Chandrachud was another good professor who taught his subject to the satisfaction of the students, not that he was eloquent but he explained his points in simple, expressive language He was then the Dewan of a princely state and came to Poona to deliver his lectures every week All admired his simplicity, his kindness and his concern for the welfare of the students I did not have the pleasure of knowing Prof Chandrachud during my student days I met him once or twice very late in life After his son Yeshwant, the present Chief Justice of India, and his wife Prabha entered our life as very close friends, they once took us to their ancestral house at Budhwarpet, near Jogeshwari Naka, in Pune A lunch had been arranged on the first floor of the old house Later Yeshwant took us to his father I still remember the old man sitting in a somewhat low chair and he gave me the definite impression that he was at peace with himself Cheerful in outlook, introspective by temperament, a voracious reader, he had every reason to be proud because his son had succeeded brilliantly at the Bar early in life and Prabha was a very intelligent, cultured and devoted daughter-in-law Prabha s father, Dada Yerawadekar, I knew late at the Bar Dada was practising in the Subordinate Courts after his retirement and sometimes brought some cases to me to be filed in the High Court He liked to meet me and talk to me Usually he came in the evening a little tired and we were always happy to have a cup of tea He also, like old Chandrachud, was proud of his daughter and son-in-law and he had every reason to be so I see now the face of Dada with a little perspiration on his forehead and a Hungarian cap on his head,

I may recall an incident during my second LL B year I had been recently married and every fortnight I used to go to Satara by the bus service on Friday evening and return to Pune on Monday afternoon Sometimes the roll used to be called and, if it happened to be a Monday when I was absent, my friend Karmarkar or Diwan would arrange to answer for me by changing their voice suitably and saying 'yes, sir' when my name was called out One Monday, it happened to be Prof Gharpure who called out the roll and Karmarkar answered for me At the end of the lecture, the Principal called out my name and Karmarkar with his native wit promptly told him that I had just left the hall 'Very well then," said Gharpure, 'ask him to see me in the evening '

When I returned from Satara in the afternoon, Karmarkar said 'My dear boy, you and I are going to be in trouble Gharpure has presumably found out that I answer the roll for you and he has called you to see him in the evening I felt perturbed and did not know how to face the saintly teacher who liked me much and whom I held in high esteem When I walked into his room, the old man benevolently smiled and said to my agreeable surprise Gajendragadkar, this is a new book I want you to read on Hindu law After you have finished it, pass it on to Karmarkar' Until I returned to the Ranade quarters where we stayed, there was tension in our room Both Karmarkar and Diwan sat silent, dejected and apprehensive When I walked in and told Karmarkar the outcome of the visit to the Principal, we all relaxed My fortnightly visits to Satara continued

There is one more incident which, I think, may be mentioned in connection with my law college life A leading criminal lawyer from Sangli used to teach us the Indian Penal Code He spoke fluently, rather too

fluently, so that sometimes he did not wait to choose the appropriate words or appreciate what effect the words he was using were likely to have One case of this hasty eloquence occurred when he was describing the offence of rape He wanted to refer to a recent case and began "I will now mention to you one remarkable case of rape in which I was involved The class roared with laughter and the professor saw the mistake he had committed in saying that he was involved in this case He corrected himself and said 'I see why you laugh and I understand it, but I take it you understand that what I meant was the case in which I appeared as a lawyer" Then the lecture went on One lesson which I learnt from this incident was that, even if one were eloquent and had a good command over language, one should not speak so fast as not to weigh the relevance and the effect of words in the context of the points which one was making Fast delivery should not be confused with fluency I myself am prone to speak fast and I sometimes wonder whether I committed any *faux pas* as my professor did

Chapter 6

I JOIN THE BAR

On taking my LL B Degree, Shalini and I moved to Bombay in July 1926 As we entered Appa s house, which was a flat on the top floor of the Maharaja Building at Girgaum, my sister-in-law welcomed us ceremoniously and when we touched the feet of my brother and sister-in-law, with tears in their eyes they blessed us Appa said How I wish our mother and father were alive to see the son, of whom they were proud, now happily married and about to embark on a career in which, I have no doubt, you will go a long way! Appa gave me constant encouragement and told me that he was certain that sooner, rather than later, I would find myself on the Bench of the High Court Fortunately, he was alive when I was elevated to the Bench on 6 March 1945, and he attended the first court where I was formally received by the Government Pleader and the President of the Advocates Association When I returned in the evening, my brother was waiting to see me at my place and asked "Hasn't my prophecy come true?' I had opened my office in one room in a building opposite the Maharaja Building After Sharad was born in 1929 in Satara and Shalini returned to Bombay with the child, we shifted to a place of our own in Bhimarao Wadi Appa was slightly disturbed but I explained to him that his life was different from mine and it would, all things considered, be better if I stayed separately so that our relations would continue as affectionate as ever and that indeed turned out to be true

Before I joined the Bar, Appa had asked me to call on

Kane, Jahagirdar and Gumaste—the last resided in a flat below our flat in the Maharaja Building I did so and they all received me with great warmth and said they wished the best for me in my career

Gumaste in particular was very warm in his welcome He said "I have a big library in my flat and you are welcome to make use of it whenever you want

When I was intending to join the Bar, Mr Shingane, who later became a Government Pleader, was already a leading figure on the Appellate Side Bar It was but natural that I went to consult him about the desirability of joining the Bar He gave his opinion in the following terms The legal line is not meant for you, nor are you meant for the legal line It would be better for you to follow in the footsteps of your elder brother and become a teacher" I trust he was not unhappy to see his judgment proving wrong when I became a High Court judge

Appa said one morning Today I will take you to the entrance of the High Court and then you start your career at the Bar' We took our seats in a tram on route 8 which left from Opera House, halted in front of the Maharaja Building, and ended at Flora Fountain Both of us got down at Flora Fountain Appa had to go to Elphinstone College but on the way he took me inside the compound of the High Court and said 'Here is the building, magnificent in appearance and rich in tradition This is your *karmabhoomi* Go ahead The blessings of father and mother are with you and my best wishes will accompany you throughout"

As I ascended the staircase to the first floor, I really did not know where the Appellate Side Bar Room was When I reached the first floor, a person standing at the door of the Appellate Side Bar Room asked "Are you

wanting to go into the Appellate Bar Room?' He probably took me for a client from the mofussil I told him "Yes, I want to go into the Bar Room because I want to join the Bar I have taken *Sanad* already' Then I walked in and met Jahagirdar, Gumaste and Kane Jahagirdar took me round and introduced me to many members of the Bar and I thus became a member of the Appellate Side Bar Never had any one joined the Bar so completely ignorant of the Court procedure, its etiquette, its requirements and the circumstances which would bring Appellate Side work to a new entrant of the Bar When I came to Bombay in July 1926, it was but my third visit to the city, the first had been in connection with my meeting with Jinnah and the second with my M A examination The crowded city and the traffic and noise on the road almost frightened me and I did not know how I would fare in this new world

As was customary, I put up my nameboard by a pillar near the entrance of the Maharaja Building, where my office was initially located, and so my career began Days passed and no brief came my way Three months went by and I began to wonder whether I should not take up teaching because that was in the family tradition When these thoughts began to trouble my mind, a letter came from Principal Hamill[1] of Karnataka College addressed to my brother, enquiring whether I would be willing to take up an assignment as Professor of English at Karnataka College There would be a vacancy from January 1927 and the Principal would be happy to appoint me He was my Professor in Deccan College and my First Class at the M A examination with English and Sanskrit had impressed him My brother showed me the letter and asked for my

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1 Who later became the Principal of Elphinstone College and after whom the Students' Representative Body of Elphinstone College is named (*R A J*)

reaction I said "I am fed up with this waiting and I would prefer to follow the same profession that you have chosen" He differed, but nevertheless said 'If you want, I will send a reply to Prof Hamill accordingly' Then it was almost settled that I would join Karnataka College in January 1927

Man proposes and God disposes I had heard this saying many times in my student career, but it became actually true in my life As I was preparing to take up my work as Professor of English by reading the text-books prescribed for the classes which I was expected to teach, a client walked up to the top floor of the Maharaja Building one morning and said Vakil Saheb, I have a brief for you, and he handed over to me a notice which was served on him as a respondent in a First Appeal He also handed over to me notice of the stay petition which had been filed by the appellant What was then more significant was that he handed over to me a hundred rupee note and said "This is for the present — a part payment of your fees Mr Rajguru of Poona, who has directed me to you, will settle the rest of the terms later on

I really did not know what was required to be done when one accepted a brief I had not even printed my *vakalat* forms So I rushed down to meet Gumaste and told him that a client had come to me and I enquired what I was supposed to do Gumaste was amused at my innocence He gave me a copy of his printed *vakalat*, scored out his name, put my name in its place in his own hand and gave it to me and said Take your client's signature on this form and ask your clerk to file it in the office Accordingly I filed my first appearance and changed my plan of going to Karnataka College There is a saying about destiny shaping our ends, rough-hew them

how we would I remembered it as I gave the *vakalat* form to my clerk to be filed in the office and mentally decided that it was destiny which wanted me to stay on at the Bar I informed Appa and he was delighted

A further development in my first brief revealed new surprises The stay petition had been filed by the appellant's senior lawyer, S Y Abhayankar Abhayankar had briefed counsel Thakore even for the stay petition I did not know that the petition which was supported by an affidavit had to be contested by filing an affidavit-in-reply I prepared myself to deliver a long speech, showing that the application was not justified in the case and that, I thought, would make an impression on the mind of the Court Lawyers at the Bar just smiled at my innocence and the way I began my career and I prepared myself to argue my first petition

In due course, the application was placed on the board, and, since it was known that I had joined the Bar with a distinguished academic career, there were many in the court room to see how I fared against the giant Thakore When the case was called out, Thakore just spoke two sentences He said "My Lord, we have filed the affidavit in support of our petition, but no counter-affidavit has been filed and the rule should therefore be made absolute' Every one of the words which Thakore uttered went over my head I did not know what affidavit meant, I did not know that a counter-affidavit had to be filed and I did not know at all what Thakore meant by saying that the rule should be made absolute I was completely confused and my dream of making a good speech evaporated into thin air In sheer disgust and panic I felt like going down to the bowels of the earth I became absolutely dumb and the crowded court was full of sympathy, if not pity, for me The presiding judge

was Sir Lallubhai Shah He was a gentleman by temper, compassionate in heart and profound in his knowledge of Law, which was apparent in every one of his judgments That his learning was matched by his feeling was evident as he addressed me in a very kind and sympathetic tone 'Young man, you probably did not know that a counter-affidavit should be filed and I gather this is your first brief We will adjourn the case to enable you to file a counter-affidavit How much time do you want?" I was dazed and so I said The court should give me two days time He said 'We will give you two weeks time and you file the counter-affidavit" The case was adjourned Later I filed my detailed affidavit When the case was placed on the board next time and was called out, Thakore argued elaborately Sir Lallubhai, without even calling upon me to reply, said "Rule discharged with costs ' By that time I had mastered the meaning of the mystic expressions ' Rule made absoute" and "Rule discharged ' I knew that the order was in my favour though I was a little disappointed I could not make my maiden speech before that benevolent judge Sir Lallubhai passed away within a few months thereafter and I did not have an opportunity of satisfying him that the young lawyer whom he had treated so kindly deserved his kindness and would always remember him with the utmost respect and gratitude

When this incident took place, I said to myself "If by chance I ever become a judge, Lallubhai will be my model Whether I succeeded in keeping to the noble standards of Lallubhai s demeanour on the Bench and reached anywhere near his learning I cannot say I can only say with perfect honesty that I tried my best

Another professional experience which I gained at the very threshold of my career is worth recording During

the first two or three months after I joined the Bar, a client came to me from Karad with a note from a lawyer informing me that the bearer of the note was a rich man and was keen on filing a civil revision application against the concurrent decisions of the courts below that the transaction which he was alleging was a mortgage was in fact a sale This was the pattern of litigation in those days under the Bombay Agriculturists Debt Relief Act The note added that the client would pay Rs 250/- as my fees and would be prepared to engage a senior counsel if necessary The fee was no doubt attractive by the standard of those days But my professional ethics told me that, if I saw that the case was not likely to succeed at all, I should persuade the client not to file the revision application This in fact was what I did, and I had forgotten all about the case A year and a half later the same litigant approached me and said 'Saheb, you do not recognise me I had come to you with a civil revision application which you refused to file on the ground that it had no merit and was bound to be dismissed You were no doubt honest, but I think you failed to see the real point I then went to another lawyer and filed the revision application It was admitted and today it has been allowed'

I could see from the eyes of the litigant that he was absolutely certain that I was a novice at the profession and did not really see the point I inquired from him who had appeared for him, and he said 'H C Coyajee instructed by K N Coyajee" I asked him which judge heard the application and he mentioned the name It was well known that the judge concerned was erratic and often pronounced unpredictable judgments H C Coyajee, who was a pastmaster in the art of exploiting the weak points of the judge, must have done the trick But as a result of this experience, I decided that it was not for the lawyer

to be the judge and whenever a client engaged you, you should merely tell him that the matter could be argued on certain points which were in his favour Thereafter I never rejected a brief presuming to judge for myself what the chances of success would be Every time I felt diffident about the prospects of the case, I would content myself by saying that the case was arguable The result was that in Khandesh I came to be known as the arguable Gajendragadkar" Of course, if the case was utterly hopeless, I refused to accept it

In the Appellate Side, in due course we formed a small group of friends—myself, K B Sukhtankar, V B Karnik, K T Sule, P S Joshi, M G Kher and K N Dharap I liked Sule so much that I enquired from him whether he would like to be my junior when I had attained a certain position at the Bar He jumped with joy and said "Of course, yes, with pride and pleasure" Then destiny played its part Sule soon left the Bar and joined the Communist Party as a full-time member What a glorious, self-sacrificing career Sule had—sacrifice, sacrifice, sacrifice all the way! A clever lawyer, a persuasive speaker, Sule appeared in many labour cases and many times I had the pleasure of hearing his eloquence when I was on the Bench of the Supreme Court Sule s has been one of the few really self-sacrificing careers that I have known In retrospect it seems to me that the life of Khandu Sule was a saga of dedicated service for the cause of labour and he was not deflected from his chosen path even by serious illness The innocent smile on his face never disappeared and his sense of humour never failed him in moments of worst agony He wrote several articles in Marathi in the same vigorous style in which he addressed several labour rallies and even the courts He had a diction of his own and expressed his personal views unambiguously and emphatically A lighter side

of his personality should be mentioned here Despite his being soaked in Marxism and in the philosophy of materialism, Sule had developed the hobby of astrology and palmistry He had once predicted that I would attain a high position in the judiciary In those days one could dream of a District Judgeship or at the most a High Court Judgeship Sule lived to see my rise to the position of the Chief Justice of India In the Supreme Court once when he appeared before me, a brother judge asked me whether this was the same Sule who had predicted a bright future for me When I answered in the affirmative the brother judge wondered how Sule did not know the fate of the case which he was arguing before us People did not know what a great soul Khandu Sule was as he never sought publicity He was a gem of a man He died prematurely as a result of serious illness His friends continue to mourn his loss A S Desai was a friend of mine and my neighbour He asked me in a friendly way whether I would take his brother Vasant as my junior I said "With pleasure" V S Desai was then teaching in a private English school Soon thereafter he joined me as my junior Though he had not been in touch with Law while working as a teacher, I found that Vasant was an extremely able, intelligent and astute lawyer Throughout the period he worked with me, he gave me valuable assistance Drafting of civil and criminal as well as miscellaneous applications became entirely his job, and he used to work up my briefs, note authorities and jot down points In the court, sitting by my side, he would sometimes whisper some points which I might have failed to make It was impossible to find a more loyal, more dedicated, more intelligent and more able junior Later, he became a judge of the Bombay High Court and on retirement he is practising in the Supreme Court

Apart from certain special qualities that a lawyer needs for success on the Appellate Side, he must be in a position at the initial stages in any case to receive support from lawyer friends practising in the district and tehsil courts in the State I was very fortunate in this respect From the outset I received support generously from several friends who commanded a large practice in their respective courts

One lawyer who was very much attached to me and consistently sent his cases to me was Panse He was practising at Baramati and later moved to Poona He was so much attached to me that the day I took oath as Chief Justice, he came all the way to New Delhi, presented me with a fountain-pen and made an affectionate request that I should sign my oath with his fountain-pen I did so It was friends of this kind who made my life very happy when I was at the Bar

My practice grew and reached remarkable dimensions because my work at the Bar gave satisfaction to the judges, to the litigants and my constituents One test of a substantial rise on the Appellate Side used to be the filing by a lawyer of a hundred matters on the opening day after the long vacation, and this I reached within a few years of my joining the Bar Once you make your name, your work goes up by leaps and bounds and you find it very difficult to manage your file At this stage, fortunately, V S Desai joined me as my junior Work on the Appellate Side really means the work of a solicitor and the counsel combined The mechanical part of my work was looked after by Banavadikar, my clerk who is still alive and active He was intelligent, enthusiastic, loyal and devoted and knew the art of looking after clients and lawyer friends A good clerk is an asset in a very real sense to a lawyer on the Appellate Side and that Banavadikar was

Advocacy at the Bar can be of different kinds It may be aggressive or persuasive, it may be exhaustive or selective, it may be presented in elegant, eloquent language or in broken style which sufficiently serves the purpose of conveying your meaning In fact, the same advocate can be aggressive in one court or one case and persuasive in another The nature of the case and the attitude of the judge and his relations with the lawyer determine the nature of the advocacy and the manner of presentation of his case When I said that advocacy could be persuasive or selective, I meant that some advocates believed in urging all points raised in the proceedings below, while others might make a selection and press only such points as appeared to them to be sound and tenable A wise judge naturally prefers selective advocacy, a judge who is not perceptive or is not experienced or intelligent enough can sometimes be taken down the garden path by exhaustive advocacy because he is not able to discriminate between plausible and substantial or merely arguable and sound points

When I was at the Bar, we had representatives of both kinds of advocacy Looking back, I fancy I always adopted a selective and persuasive advocacy and took very great care in mentioning facts accurately and not raising frivolous points either in fact or in law That is why most judges took facts from me and received my arguments sympathetically

At my time there was a large number of prominent lawyers and competition at the Bar was naturally very keen Among the lawyers who were a little senior to me and who commanded good work were V D Limaye, G B Chitale, Y V Dixit and K N Dharap Limaye was casual in his advocacy, Chitale was persistent, Dixit was direct, discreet and precise, Dharap tended to be more aggressive than

persuasive But Dharap had a personality of his own and he had the unique advantage of having worked at Thana on the Original Side and on the Appellate Side in Bombay He was always sure of his facts If you appeared against him, you had to be very watchful and careful Dharap was an intimate friend of mine and our relations continued to be so, though we appeared against each other in many cases Unfortunately, he died early of diabetes Just about the time it was expected that he would become a judge, it appears destiny played a foul role Investigation of Gandhiji's assassination showed that the diary kept by one of the accused, which was seized by the police, contained the name of Dharap whom the accused had consulted My earnest effort to persuade the Chief Justice to ignore that fact and recommend Dharap for appointment as a judge on the ground that he was one of the outstanding lawyers on the Appellate Side went in vain

Utsavlal Shah was in my view the ablest among mid-senior lawyers of my time A small and frail figure, he was not impressive in appearance, but his mastery of law was remarkable and the soft and persuasive quality of his advocacy was the envy of us all He commanded very large work, but his kindness and goodness were exploited by his friends, with the result that under the pressure of heavy work of all types and ambitions about his future progress and elevation to the Bench, he died prematurely

After the death of Utsavlal, J C Shah who was till then practising at Ahmedabad, joined the Appellate Bar in Bombay In his case it can be said that he came, he saw and he conquered, attracting a substantial part of the work of the Gujarat side Later, he commanded work from Maharashtra and Karnataka and became one of the leaders on the Appellate Side J C Shah had every

factor in his favour an imposing personality, good advocacy, mastery of law and a friendly temper He believed in urging all the points, because he felt that a lawyer had no right to judge, it was the judge's duty to decide which point was good and which was not, and presumably he assumed that, if bad points were pressed very hard and with all solemnity, they might succeed in some courts Chief Justice Beaumont, who liked J C Shah, did not approve of his exhaustive, non-discriminative kind of advocacy and, in fact, he used to mention it to him in a friendly way in the court several times Nevertheless, Shah's merit was undoubted and his advocacy was of an exceptional character He was a most industrious lawyer and, later as a judge he was known, and justly so, as one of the most industrious and thorough-going judges on the Bench However, as a judge, he was not very tolerant of the type of exhaustive, non-discriminative advocacy of which he himself was a master

Amongst the seniors, a few names I recollect Shingne was the Government Pleader The remarkable point about Shingne s advocacy was that his notes in a case, however heavy it might be, were made on one sheet of paper He developed his points methodically and cited cases just enough for the purpose He could not be regarded as a brilliant lawyer but he was certainly a successful one A G Desai, Shingne s contemporary, was at the top of the Bar for several years Tall in stature, imposing in appearance, sweet of tongue and soft in temper, friendly to all, and of extremely, almost dangerously persuasive advocacy, A G was a real terror to his opponents Nilkanth A Kelkar was not at his best when I joined the Bar He took only a few cases Easy-going and contented at one time he nevertheless monopolised criminal appeals and it used to be said that the Criminal Board showed only two names, the Government Pleader

and Kelkar Kelkar possessed remarkable tact and knew how to handle the judges A story current at the Bar was that, when Kelkar was at his best, he deliberately made a misstatement or two in opening his appeal and, as soon as he did that, the Government Pleader Patkar, would rise and correct the mistake Kelkar would immediately apologise and sit down Patkar in his excitement would then state all the facts of the case and, as soon as the statement was over, Kelkar would get up and say My Lord, now that all the facts have been fairly and clearly stated by my learned friend, may I proceed to formulate my points ?' Kelkar accepted a limited number of briefs, charged his clients very heavy fees and gave them return for every paisa that he charged He would work his briefs thoroughly well and in every case he satisfied himself genuinely that his client was a gentleman and that his case was absolutely sound on merits There was hardly any matter in which he appeared and recognised that there was any weakness in it When he won the case, the judge was wise and clever, and, if he lost the case, the judge did not understand the law, he would comment

Tulzapurkar[2] was another remarkable lawyer Friendly, outspoken, patriotic, Tulzapurkar was interested more in literary pursuits than in law Nevertheless he commanded good work and he was respected by the Bench His famous work in Marathi, *Maze Ramayana,* made history at the time of its publication H C Coyajee and G N Thakore were two leading counsel They used to be frequently briefed by the advocates because, as counsel, they could not accept briefs directly from clients Thakore was a popular and successful lawyer and in the art of distinguishing cases cited against him, he had no equal

2 Father of Justice V D Tulzapurkar of the Supreme Court

His method of advocacy generally bordered on aggressiveness, whereas Coyajee was persuasiveness personified Coyajee had an impressive personality, was gentle in nature, poised in his outlook, considerate to the juniors and selective in the points to be urged before the court He was, in a sense, an actor, because he knew when to raise his voice in arguments to show his indignation and when to make it lower to persuade the judges He had a keen sense of humour Once, arguing before Rangnekar and MacLean, Coyajee said My Lords, this is one of those cases in which court fee having been paid, decree had to be passed ! ' MacLean did not understand what this meant Surely, Mr Coyajee, said MacLean, "in every case, court fee has to be paid Rangnekar then turned to him and whispered in his ears that it was a judgment delivered by a judge who was believed to be corrupt, and the astute advocate was slyly suggesting that the decree was the result of illegal gratification paid to the judge by the successful party Rangnekar in his sarcastic manner told Coyajee 'I take it, Mr Coyajee, you have other points to argue Let us proceed to hear them Both Thakore and Coyajee commanded large counsel work on the Appellate Side Towards the end of his career, A G Desai also began to work as counsel though he did not refuse cases that went to him directly from his old clients By his nature and ability, Desai was certainly the equal of Coyajee and Thakore We were all proud of him

V B Karnik was junior to me in Deccan College But when the call for boycott of colleges was issued by Gandhiji, he left college Then, after the movement subsided, he passed the then current Advocates' Examination and joined the Appellate Side Bar I heartily welcomed him and he became a member of our group Karnik was very thin in appearance and very modest in

his demeanour, but in his approach to the points of law he was very impressive His statement of facts when he opened his appeal was always precise and clear It seemed as if young Karnik would go a long way at the Bar, but that was not to be He soon came in touch with M N Roy and became devoted to him and his cause and, in fact his constant associate Gradually he lost interest in law and became a full-time worker in Roy's party Roy was an outstanding personality and in the sheer sweep of intellectual powers he had no equal in contemporary India I have read most of his writings and have been impressed by his vision, his style, his versatility and his general philosophy No wonder Karnik was attracted to him and entered politics with him He stood by him, along with Maniben Kara He took part in the labour movement and joined Roy in the task of looking after *Independent India*, a weekly which attracted all intellectuals at that time In fact reading Roy's writings and his books was a matter of education in the best sense of the term Having chosen that path, Karnik stuck to it with determination and a sense of dedication His contribution to the cause of labour is admired by all the labour groups and trade unions, and his straightforward approach is reflected in his numerous books This endeared him to all sections of the labour movement Today he is regarded as a veteran in the line and is duly respected By his leaving the Bar on the Appellate Side, we lost a good lawyer, but Roy's party made a positive gain Like Sule, Karnik also is a gem of a man To one of Karnik's many books I have contributed a Foreword at his request His last book is on M N Roy and can be regarded as a model reference book on the astonishing and breathtaking career of that great intellectual giant By calling the book a reference book I am not doing injustice to the excellence of the book. It is a compre-

hensive, objective, constructive, and in places even critical of Roy's multifarious activities in politics, social matters, literature and philosophy In fact it can be said of M N Roy न कश्चित् धीमताम् अविषयो नाम. 'There is no subject to which the really intelligent are strangers'

Judges differed in their method of work and in the manner of receiving the advocate s arguments Patkar, for instance, never interrupted a lawyer, took down copious notes of whatever was said at the Bar and rarely asked any question All of us knew that if he did want to ask any question, he would plan it and his lips would quiver for a few minutes before the question was asked Broomfield was an I C S judge, thorough-going, impartial, straightforward and conscientious He rarely looked at the Bar unless he wanted to correct a mistake made by the advocate in the statement of his case He would just then raise his head, look at him straight in his eyes and tell him 'What you are stating is not correct" The element of personal contact and a sense of humour were totally absent in his court and that was in contrast to Rangnekar's where the atmosphere was never surcharged with tension Rangnekar was intensely human and by occasional sallies of humour he would lighten the proceedings He realised, I think rightly, that work in court was very taxing and often dull but it need not be made more so by banishing humour from the proceedings of the court and by adopting a purely mechanical and impersonal attitude Arguing before Broomfield was always very exciting but sometimes tortuous, but it must be said in fairness to him that he tortured himself as much as he did the members of the Bar by going thoroughly into all facts, with the result that at the end of the hearing he knew more about the case than the lawyers themselves His judgments dealt meticulously with all the points and his final order was always precise and clear Drawing up

a decree in accordance with his judgments was a very easy matter for the decree department

Sometimes, however, Broomfield was apt to be abrupt and even rude Once when A G Desai was arguing in his court and urging a point, he looked up and said 'It is nonsense" A G was a very persuasive advocate and never offended the court, but the use of the word 'nonsense upset him and he quietly repeated the same argument "Haven't I told you, Mr Desai, said Broomfield, 'that this argument is nonsense ?' Desai in a quiet, dignified tone retorted by saying 'I know Your Lordship has said so, but I have deliberately repeated the argument to tell your Lordship that the word which Your Lordship used about my argument I have not heard in my long career at the Bar, nor has it been heard in this court ever ' Broomfield realised his mistake and said "Mr Desai, I am sorry" I had a similar experience with Broomfield I had reason to believe that he liked my advocacy But one day when I was arguing a heavy appeal before him, there were several questions of law involved in the appeal pertaining to land While narrating the preliminary facts leading to the points, I mentioned that the land in dispute was situated near Mahuli which was at a distance of about six miles from Satara Later as the argument was developing, I referred to Mahuli as a village which was at a distance of five miles from Satara Broomfield's sense of accuracy was offended and he looked up and said 'You once told us that Mahuli was six miles from Satara and now you say it is five miles Which is correct ? Without losing my temper, I put on a smile and asked him in a soft, quiet tone My Lord, does it make any difference to the question of law which I am arguing, whether Mahuli is five miles or six miles from Satara ? The distance between Satara and Mahuli was totally irrelevant to the point of law, but if you must insist I will correct my

error and adhere to my first statement" For once Broomfield smiled and enjoyed the rebuff

Sometimes, before I C S judges, we realised that it was one of their infirmities that they did not know how evidence was led after due preparation consisting of meticulous tutoring, in other words, how evidence is tutored and witnesses are won over during the course of the trial It is quite true that an essential feature of the Indian Evidence Act is that no evidence can be considered unless it is tested by cross-examination But a brilliant cross-examiner can make cross-examination a virtual engine of terror to an innocent witness who is often illiterate and does not know the wiles of cross-examination and can be easily confused and trapped It is the experience of many lawyers in some cases at least that truth can be established only by tutored evidence I recall that in his *Memoirs* Katju had said that in a village *chavadi* in his State when villagers met and asked any one about any incident which might have recently occurred, and before he answered, they used to tell him 'Look here, my dear fellow, speak the truth, you are not giving evidence in any court" This speaks of the exasperation or despair of villagers who have faced the terror of cross-examination

In one case involving a contest between adoption and gift deed, I had a typical experience in Broomfield s court The claim was very large and the litigation was the result of that well-known but unfortunate judgment on *Ananta* vs *Keshav* delivered by Justice Rankin who had then joined the Privy Council Chief Justice Rankin while at Calcutta was known as one of our able judges and he delivered some fine judgments indeed But *Ananta* vs *Keshav* was not a particularly good judgment It created chaos in Maharashtra where *Mitakshara* prevails

in the matter of the rights of the adopted sons And since it revolutionised the prevailing view of the law regarding the rights of the adopted son to get the property in the adopted family, it led to a large number of adoptions and consequently to a large number of gift deeds raising invariably the question whether the gift deed was executed first in point of time or the adoption preceded the gift deed That was the nature of the dispute in the appeal which I was arguing before Broomfield and another judge

I appeared for the adopted son and supported the finding of the trial judge that the adoption had taken place before the gift deed was executed That turned upon the precise time when the adoption had taken place and on this point the priest's evidence had to play the major role In examination-in-chief, the priest meticulously supported our case He referred to the *panchang* and the auspicious time at which the adoption was made and affirmed that it was prior to the deed of gift After the examination-in-chief was over, the trial court rose for the day The next day the priest s cross-examination began and the lawyer started putting questions to the priest about the time when adoption took place It soon became obvious that the priest was willing to oblige the defence He first began to prevaricate and then almost completely went back upon his testimony in examination-in-chief Broomfield appeared perplexed and annoyed He asked me as I was reading the cross-examination "How is it that this man is speaking in cross-examination something which is thoroughly inconsistent with what he stated in his examination-in-chief the previous day ?" If only Rangnekar was hearing the appeal, he would have in a typical humourous style asked me "Have you any idea Gajendragadkar, how many notes passed from your opponent to the priest ?' It was obvious that the priest had been won over by the defence for some consideration,

but I could not say so and Broomfield did not guess the reason

Civil Service judges have a commendable ability to weigh the pros and cons on both sides dispassionately and rarely projected their personal points of view, what happened outside the court which had effect on the evidence led in court was always unknown to them But they used their judgment, in fact, so far as the Bombay High Court is concerned, the Indian Civil Service has given us some of the most outstanding judges — Fawcett and Broomfield himself, to mention only two, but that is a different matter

Rangnekar s sallies were enjoyed by the crowded court but not by the advocates at whose cost they were made I remember one case in which Manerikar, who was a very capable lawyer but lacked sense of humour, sometimes urged arguments without fully appreciating their bearing and their effect In one rape case, when Manerikar got going and was in the thick of his arguments, he asked the court in an eloquent manner My Lords, it is said that the whole offence of rape was over within ten minutes Can you imagine that this is possible ?' And this argument was addressed to the court over which Rangnekar presided Promptly, Rangnekar turned to Manerikar and asked him in a sober and solemn voice "Mr Manerikar, will you please tell us how long according to your experience rape should take ?", and then Mr. Manerikar realised what a *faux pas* he had committed in advancing that argument On another occasion, the same advocate before the same court said Apropos my client, My Lords, except for the fact that he was carrying on with his neighbour s wife for many years not a word has been said against his character" Rangnekar in his typical smiling solemnity said "Mr Manerikar, don t

repeat that argument' Rangnekar was a very quick and clever judge, and he was very popular at the Bar Though normally he sat on the original side, whenever he came over to the Appellate Side, we were all happy and looked forward to sallies of humour and pleasantry and quick disposal of cases

Another judge whom I would like to refer to is Divatia He was a senior and leading lawyer on the Appellate Side before he was elevated to the Bench With a distinguished academic career, Divatia was very eloquent in his arguments at the Bar and on the Bench he was very popular by his pleasant manners, though sometimes he was apt to be superficial One incident may be narrated While hearing an appeal against a preliminary decree, Divatia, the senior judge on the Division Bench, delivered the judgment which ended with an order that inevitably left the impression that it was an order in an appeal against the final decree The decree department also treated the matter in a casual manner, took the final order as an order in appeal against the final decree and drew up the decree in that way This decree thus drawn was executed under Order 21 in execution proceedings and the judgment debtor, who was aggrieved by the order of the Executing Court, came to the High Court in appeal That appeal I had occasion to decide The main point which the appellant raised before us was that the decree was not executable since it was a decree in an appeal against a preliminary decree The High Court could not have passed a decree as though it was a decree in an appeal against the final decree The argument no doubt was sound, but matters had proceeded very far The decree had been fully executed and the point that the decree was not executable was raised for the first time in appeal On this technical ground we rejected the contention, but it was obvious that the High Court judgment was superficial in that it purported to make an

order in respect of a final decree The decree department also had made a serious mistake in not drawing the attention of the court towards the infirmity in the final order of the judgment

Divatia disposed of cases expeditiously without hurting any counsel, because he was quite familiar with the pattern of litigation on the Appellate Side He tried to accommodate the members of the Bar and once that led to injustice One day, before Divatia began to hear the first matter listed on his board, four or five motions for adjournments were made and as usual in his pleasant manner Divatia granted all the motions Then a junior advocate rushed to the court and stood up to make a motion Divatia thought it was also a motion for adjournment and therefore sternly told him that 'no motion for adjournment can now be entertained ' The struggling junior said to the court that he was not moving for an adjournment, but he was only making a motion that, because of the large number of adjournments which were granted, his case which was very near the bottom of the list was unduly promoted and was likely to be reached He only wanted to make a motion that the original position of his matter on the Board should be retained, and the undue promotion, which it had received by several adjournments, should not inconvenience him since he had assured his client that his case was not likely to be reached that day at all The junior went on 'You will pardon me, My Lord, for not having been able to anticipate that Your Lordship would generously grant as many as eight adjournments But for these adjournments my case would not have come up for at least two days more, because I had been assured by my friends appearing in the adjourned cases that they were very heavy and that even in your court, each one of them might take more than three to four hours The submission was taken by Divatia in good humour and the Bar also

enjoyed it Divatia said "Your case will not be taken up today," and that was all that the young lawyer wanted

Barlee, an I C S judge, was not a brilliant lawyer but he was a pious Christian, kind-hearted, absolutely keen on doing what he thought to be justice He came to the High Court from Satara where he had been Additional Sessions Judge The Satara people including the litigants revered him In this connection there is one incident which I must narrate One morning the relatives of the accused who had been convicted by the Satara Sessions Judge, came to me requesting me to file an appeal on behalf of the accused persons and they added 'Barlee saheb has asked us to brief you ' I was amazed that litigants should have gone to Barlee and that Barlee should have recommended my name to them But there it was and so I accepted the brief As chance would have it, the appeal came for hearing before a Bench of which Barlee was a member Before I started my argument, he asked me in all innocence, 'Gajendragadkar, is this the case that I sent to you?' I said, "My Lord, that is so,' and I promptly moved that the appeal might be transferred to another Bench Barlee turned to the Government Pleader and said 'Mr Pleader, do you want the transfer of this case to another Bench just because I recommended Gajendragadkar to the litigants who came from Satara and saw me?' The Government Pleader said, "No ' The matter was then argued and the appeal was dismissed That rather shows the human kindness of Barlee which encouraged illiterate litigants to go to him for advice even in regard to matters pending in court

Madgaonkar was also of the I C S, a very popular judge who took an independent view of matters of law and did not feel bound by precedents Somehow Madgaonkar liked me and encouraged me in many ways I

had never met him outside the court and yet he made it clear that he liked my advocacy and he expected me to go a long way

One day, when Madgaonkar was sitting for admissions, I had eight to ten matters on the Board As I was waiting for a chance to argue my cases, Wagh, who was the Shireshtedar of the court somehow did not take up any of my matters and I had to leave the court because my case was reached in another court As soon as I left the court, Wagh took up my matter Madgaonkar became furious and said What is it that you are doing, Mr Shireshtedar? I saw Gajendragadkar sitting in this court for two hours and when he is called to another court, you take up this case? Is that the way to help the Bar?' Wagh was a gentleman, good at heart but enjoyed the discomfiture of advocates and sometimes indulged in this kind of game On this occasion, however, it boomeranged on his head and he never tried the game again so far as I was concerned

In the famous Sholapur murder case, in which Danappa Shetty along with others had been tried for the murder of Knight, who was the Collector of Sholapur, the accused was tried by N J Wadia, the Sessions Judge, and Shetty was sentenced to be hanged The matter came in appeal and was heard by a Bench of which Beaumont and Madgaonkar were members It was clear from the start that the approach of Madgaonkar was entirely different from that of Beaumont During the course of his arguments when the Government Pleader said that Shetty was instigating people to murder Knight, Madgaonkar thundered 'Mr Pleader, what Shetty said was *'mara'* Does *'mara* mean murder or beat? If you want to say 'murder', you say *thar mara'* Is that not so?" Shingne said. "Normally one would say *'thar mara'*, but

even *'mara'* can in the context mean kill " 'It is not a fair argument, Mr Pleader, not a fair argument at all said Madgaonkar and was then red in the face

Another occasion on which Madgaonkar was very angry was in regard to the Chirnevar case An application for transfer of the case from Thana to another district was made by the accused The case had political overtones Kanga, the Advocate General, appearing for the Government opposed the application for transfer, and when Madgaonkar made it clear to Kanga that they were going to transfer the case to another court, he said In that case, Government can exercise its powers and retransfer to the original court ' Even before Kanga had completed his sentence, Madgaonkar said 'No threats in this court, No threats, Mr Advocate We will do our duty and you may advise the Government as you think right The transfer was granted and the case was tried by the transferee court

Chapter 7

SOME CHIEF JUSTICES

Chief Justice Sir Amberson Marten was reputed to be a very learned lawyer But the State laws, with which the Appellate Side litigation was mainly concerned, were completely new to him That is not surprising because he came from the Bar in England It is only I C S judges who, after working as District Judges for a number of years, are promoted to the High Court and lawyers practising on the Appellate Side, who are quite familiar with the pattern of appellate litigation, elevated to the Bench Marten generally reserved his judgments and took a long time to pronounce them, but when he pronounced these judgments they read very well and most of them were learned and sound

Marten was apt to be pompous and ceremonious in court About Hindu Law, the one proposition with which he was quite familiar was that, in order to constitute a valid partition, there must be an intention to separate on the part of the coparceners One day, when Marten was sitting for admission work, Kelkar stood up to argue for admission one of his second appeals It was a matter in which both the courts below had held against Kelkar and, left to himself, Kelkar probably would have said there was nothing in the matter and it might have been dismissed But before Kelkar began, Marten said to him "Mr Kelkar, I have read the judgments but find that neither judge has applied his mind to the primary question as to whether there was an intention to separate on the part of the coparceners or not" Mr Kelkar, who was a first-class actor, looked surprised and apologetically said.

"My Lord, when I drafted the memo, this point did not strike me Will you please permit me to take this point and admit the appeal ?' "Yes, of course," said Marten and ordered "Permission granted to take a new point, appeal admitted" Kelkar left the court and I followed him I said "Kelkar, what is all this about ? How could you have forgotten to take this point ?" He said "It just doesn t arise in this case The suit has been instituted by my client, who was a minor at the time of the partition, to set aside the partition on the ground that it had been made to defraud him of his legitimate share by assigning to him properties of very poor quality unequal in value to his legitimate share And this point has been considered by both the courts below and has been rejected, but Marten knows only one point of Hindu Law and, since he raised it, I had to agree and the result is that the appeal which I would have asked the judge to dismiss has been admitted"

Marten was once hearing an appeal and Thakore was in charge of the court It was a complicated matter and Thakore as usual was full of his points and was pressing them aggressively In the midst of his arguments, Marten said to Thakore "Mr Thakore, why are the windows of the court painted green ?' Thakore just did not understand what the question was, and, since he also lacked sense of humour like Marten, he replied "My Lord, I see no reference to the green windows on the record which I have studied very carefully ' No, no, no, Thakore, look around and you will see the windows in the court are painted green, and I am asking why are they painted green ?" Thakore said "I cannot answer this question," and added petulantly "Can I proceed with my arguments ?" Naturally the story about the green windows travelled round the Bar rooms immediately

One day, a short time after I joined the Bar, I found a special board prepared for Marten for admission, and the only matter on the board was "Application for disciplinary action against lawyers " Through curiosity I sat in the court to see what it was all about Rao, the Assistant Government Pleader, mentioned to Marten that the application was based on a skit called Court Fees Act' which was circulated to the Poona Bar on the occasion of their gathering It was a parody and attached to it was a schedule showing what fees were charged by the staff of the courts in the mofussil for some special, irregular or illegal services Rao proceeded to read from the sections some provisions in the schedule Marten thundered "Action must of course be taken against the authors for the skit Issue notice " On enquiring with Rao, I found that the lawyers, who were supposed to be the authors of this skit, were my friends Rajguru, Honap, Mate and V S Desai[1] V S Desai had then applied for the post of a subordinate judge This proceeding naturally created an obstacle in his way Desai later became a judge and, after retirement, wrote Marathi plays which brought him reputation from the Marathi dramatists and the public Incidentally, some of his plays were performed by the Gandharva Company

I got in touch with Rajguru immediately and informed him as to what had happened All the four of them rushed to Bombay and I filed my appearance for them Fortunately Rajguru was an advocate and so his case had to be referred to the Bar Council The Bar Council appointed Counsel O'Gorman as the tribunal to try that case and since the matter against one advocate was referred to the Bar Council, the proceedings against the other three who were pleaders were stayed

1 Of Poona and not one who was junior of Gajendragadkar (R A J)

As soon as the proceedings taken before O'Gorman began, he said What is all this fuss about ? It is an ordinary skit which one should read, admire and throw away !' Then he was told that Chief Justice Marten had taken a very serious view Then O Gorman said 'Let me try it in all seriousness,' though he was not at all serious about the matter and treated it purely as a humourous skit He made no secret about the fact that he thought that it was *much ado about nothing* However, we wanted to play for time because Marten s tenure was soon coming to an end and we did not want the matter to go before Marten for final hearing We succeeded in this effort and O Gorman made a report that there was no substance in the complaint made by the Government Pleader and it should be dismissed

On receipt of this report, the Bar Council considered the matter and endorsed it Thus with the report and the endorsement of the Bar Council, the matter was placed along with other applications against the three lawyers before Beaumont who had taken meanwhile charge as Chief Justice

Since the matter had become notorious, the court was crowded to see what Beaumont's reaction to the proceedings would be My lawyer friends were very nervous When the matter was called out, even before Rao could open the case, Beaumont said 'Mr Pleader, what is all this fuss about ? This is just a skit You should show some sense of humour and congratulate the imaginative writers who have drafted and printed the skit When Rao told Beaumont that Marten had taken a serious view of the matter, Beaumont added I do not share that view and, without any further ado, your application ought to be dismissed, Government to pay the costs of each respondent who had appeared by a

separate counsel " Thus, this notorious 'Court Fees Act' and the rule issued against the authors came to a comic end Beaumont showed by his imaginative action that unlike his predecessor he did not believe that humourous skits should be treated otherwise than as skits

Sir John Beaumont was Chief Justice for several years He was an outstanding jurist, lucid in his expression, polite in his manners and very quick in appreciating points If you put your points in good English, half the battle was won When Beaumont began to deliver his judgments, it was a pleasure to hear him Point after point was dealt with by him without any notes lucidly, precisely and briefly He was one of the best Chief Justices that the Bombay High Court had in my time

Beaumont had some weak spots resulting from a superiority complex Within the first week after he joined the court, he was hearing a civil first appeal in which was involved a question of construing some complicated sections of the Land Revenue Code Shingne in contesting the views of the lower court suggested to Beaumont that it was a matter of construing the Land Revenue Code and said "It will be useful if your Lordship refers to your colleague Justice Baker who has large experience in the field 'What has experience got to do with the question, Mr Pleader ? ' promptly asked Beaumont, 'you read the sections and I will construe them," and he did accordingly The matter went to the Privy Council and Beaumont was reversed

Beaumont was very clever but somewhat impulsive One day I was arguing a Hindu Law matter before him and Wasudev In support of my case I was relying on Hindu Law texts in Sanskrit As expected, Beaumont reacted sharply and said 'What the texts seem to indicate does not appear to me to be sensible ' I replied by saying

'My Lord it may not appear sensible to you but my duty is to interpret the text and ask the court to apply the same to the facts of the case ' After I read the text, I saw that Wasudev was entirely in my favour and without looking at Beaumont he said "Gajendragadkar, your point seems well-founded, but let us hear the respondent' Beaumont realised that Wasudev had made up his mind and he was not interested or inclined to differ So he turned to Wasudev and said 'Take charge of this case Wasudev heard the respondent and allowed my appeal Beaumont obviously appeared unhappy

After the case was over, during the recess time when I was taking tea, Beaumont's *chopdar* came to me and said "Chief saheb wants to see you ' I thought it must be about the case which had just been decided and it proved correct As soon as I walked into his chamber, Beaumont smiled and said Please sit down, tell me, didn t you take Wasudev down the garden path in the case which we have just decided? I said Chief, I do not know the way to the garden path myself, so how can I take any one down that path? I am clear about one point that what I said in court on the authority of the text was absolutely sound" 'If you say so, said Beaumont, 'I will really believe it, because I have full faith in your honesty and integrity In fact let me tell you that you addressed an excellent argument in support of your case I thanked him for this compliment and left the chamber

Three or four years before Beaumont retired, at a social function he met my brother Appa and, when Appa was formally introduced to Beaumont, he asked him By any chance are you related to P B Gajendragadkar who practises on the Appellate Side?' Appa replied "He is my younger brother, and Beaumont added "I think very highly of him but he has not met me socially yet and so, I

am afraid, I can do nothing for him," suggesting that he would like to meet me socially to enable him to recommend my name for a judgeship That was presumably his way of dealing with these matters Appa reported to me this conversation but I declined to accept the suggestion made by Beaumont, because it seemed to me that to call on him after his conversation with my brother would be like applying for a job and, of course, I was not prepared to take such a step But this conversation gave me the assurance that Beaumont thought well about me and indeed whenever I appeared before him, he made no secret of the fact that he liked the manner of my address and selective advocacy which was my style

Owing to some unfortunate incidents towards the end of his career, Beaumont became unpopular and it is a pity that the career of this outstanding Chief Justice, who was a brilliant lawyer, and human and pleasant in court, should have petered out unwept, unhonoured and unsung Many of us thought that by his departure the Bombay High Court became poorer His death in England at the age of 96 was only briefly mentioned in the Bombay newspapers, without any comment One of the causes which made Beaumont unpopular was the manner in which he dealt with Nanavati He brought Nanavati to the High Court for a term and asked him to sit in the first court with himself Nanavati was one of our most distinguished district judges, independent and fearless in his approach During the term he differed with the Chief Justice on two or three occasions and Beaumont did not like it Beaumont probably thought that the view which Nanavati was taking on each occasion was unreasonable if not perverse That was the way Beaumont was likely to look at a point of view which differed from his own The result was that he sent Nanavati at the end of the term back to Poona as district judge, and Nanavati

never saw the High Court again Nanavati was very popular with the Bar both at Bombay and at Poona and Beaumont's action in not bringing him back to the High Court was universally resented In fact, Nanavati was so popular in Poona that when he died his funeral was largely attended and the public of Poona expressed their love, affection and regard for him in unmistakable terms Beaumont did the same to Wild whom he had brought from Karachi and sent him back at the end of the term, but nobody was sorry for it

When the Quit India movement started, Advocate General Setalvad and Government Pleader Jahagirdar both resigned and that made Beaumont furious He liked Setalvad very much and he was upset by the fact that Setalvad chose to resign his post

The consequence of Jahagirdar s resignation led to an incident which concerned me B G Rao, who was the Assistant Government Pleader, was appointed the Government Pleader and Beaumont asked Rao to persuade me to strengthen the Government Pleader s office by accepting the offer of the post of Assistant Government Pleader Beaumont also asked Wadia to persuade me Wadia talked to H C Coyajee and Coyajee talked to me I told Coyajee that the offer of the post of Assistant Government Pleader to a person of my status and practice was no honour In fact the offer should not have been made and I told him that I had already rejected it and informed Rao accordingly

Rao pressed me very hard and said 'Take two days' time, do not say no' I will treat you as my equal ' As soon as Rao left, I took out a piece of paper and scribbled on it a short note declining the offer in clear and categorical terms and I added If you like, you may show this note to Chief Justice Beaumont ' I have no means of

knowing whether the note was shown to Beaumont and, if it was, what his reaction was

Talpade's case, which a full bench consisting of Beaumont, Chagla and Weston heard, went to the Federal Court and Beaumont's judgment delivered for the Bench was remanded for disposal in accordance with the judgment of the Federal Court While the matter was then being argued before Beaumont's court, the arguments lasted for quite some time and, as soon as the arguments were over, to the surprise of all, Beaumont did not call the stenographer to take down the judgment but took out sheets of paper from his pocket which contained the written judgment and began to read it This meant that he had written his judgment even before the arguments were over He must have talked to Chagla and Chagla had, fortunately for him, agreed with his view, but through mistake he took Weston's concurrence for granted As soon as Beaumont finished reading his judgment, Weston turned round and said 'Chief, I do not agree with your view and wish to dictate my dissenting judgment" This episode left a bitter taste in the mouth of those who admired Beaumont This was the case in which Sir Mohamed Zafrullakhan is reported to have said 'When the High Court says that it is unable to understand our judgment, our comment is, all that this court can do is to pronounce its judgment, it cannot supply understanding to the judge of the High Court to appreciate its judgment' This severe censure of Beaumont went round the whole country

As a result of civil disobedience, proceedings were started against eminent lawyers who had taken part in that movement Beaumont took a strict view of the matter and observed that the conduct of the lawyers in breaking the law, when it was their professional duty to uphold it, amounted to professional misconduct He proceeded to

pass severe orders against them suspending them from practice for different periods The matter naturally went to the Privy Council and Beaumont s view was reversed

Somehow during the last three or four years after the Congress government came into power (i e in 1937) Beaumont showed signs of irritability and was not the same smiling, broad-minded, liberal outstanding jurist that he always was In consequence, when he retired the Bar did not honour him and Beaumont naturally felt very sad about it That is why, as I have already pointed out his brilliant career petered out unsung and unhonoured

Beaumont was followed by Chief Justice Stone Chief Justice Stone first sat on the Appellate Side with Divatia as his colleague The long board of cases, which had been prepared for the Bench, contained many of my matters, so that I was virtually a fixture in the Court for nearly three weeks After I argued my first matter, I could see that Chief Justice Stone was impressed and throughout the proceedings while I was in his court, he was consistently polite, courteous and receptive

Later, on another occasion, when I was arguing a matter before Stone and his colleague and finished my arguments and sat down, the respondent began his reply To my surpise, Stone s *chopdar* came to the place where I was sitting and handed over to me a slip of paper The slip said 'Dear Gajendragadkar, will you please see me in my chamber in the recess?" As soon as the chit was handed over to me in open court, everybody was curious to know what it contained and my reply was that he probably wanted to see me to warn me that my arguments were irrelevant I myself did not know what it was about and so I had prepared myself for a suitable reply if he had said anything about my arguments when I met

him in his chamber But when I walked into his chamber, he rose from his chair, came to receive me, shook hands with me and said 'Please sit down I have troubled you by calling you to my chamber because I want to request you to join us on the Bench " The suggestion was entirely unexpected and I said to him "Chief Justice, I thank you for your invitation, but having regard to my commitments at the Bar, I may find it difficult to say yes' ' He said "No, no, no, I am not taking a 'no from you You are the obvious choice and you have impressed me enormously during the time I have been sitting on the Appellate Side I then said "Give me two days' time ' "Fair enough," he replied, ' but then at the end of two days you must say yes

I immediately went to the Bar library where there was a telephone At that time there was no telephone in the Appellate Side room I rang up Shalini and told her what had happened I said to her "Isn't it too early to become a judge? Would it not be better if I earned some more money before I went on to the Bench?' She said ' So far as I am concerned, your answer must be yes I have been noticing that the pressure of work is affecting your health and I am keen that you should be relieved of this pressure '

In the evening when I reached home, I talked the matter over with her again, but she had no doubt whatsoever in the matter I said "All right, as you say, so it shall be" After two days I went to tell Chief Justice Stone that I was accepting his offer He was obviously delighted

After this happened, I did not appear in the court, because I felt since it was known by all the judges that I was going to be their colleague it would not be right to argue my matters before them So my junior Desai conducted all my cases for nearly a month and more When

Chief Justice Stone made the offer to me he had said the order would be issued within less than three weeks but a month passed and nothing happened I was sitting idle in the Appellate Side room At the end of the month, I walked up to Chief Justice Stone and enquired what the matter was Then fairly enough, he opened the cupboard and showed me the entire correspondence It appeared that, along with me, Stone had sent Bavadekar's name also for appointment to the High Court Moose, who was the senior-most District Judge, had approached the Secretary of State in Council through the Governor and the Viceroy, and protested that his claims for elevation to the Bench were ignored by Chief Justice Stone and that justice should be done to him Accordingly the matter was referred back to Stone and that made Stone furious He told the Governor to inform the Viceroy and the Secretary of State in Council that he had considered the claims of Moose and he had no doubt that Moose was not better than Bavadekar to be appointed, and in anger he added that, if they forced Moose on him, he would give him a chamber in the High Court but would not assign any work to him I think this strong expression of opinion from Stone was supported by the Governor and the Viceroy and the Secretary of State relented That took time and ultimately on 6 March, 1945, Bavadekar and I took our seats on the High Court Bench

Chapter 8

ON THE BENCH

On 4 March, 1945, Chief Justice Stone rang me up from Government House and said 'Brother, you have now become my brother, because confirmation has come from the Government about your appointment You will be sworn in on Monday, 6 March" Lokur, who was a family friend and who was on the Bench, also sent his younger son Bal to convey the same news to me

After it was thus formally announced that I was taking my seat on the Bench, the first question which I had to decide was what to do with the very large number of briefs which were in my docket So far as I remember, their number was between 500 and 600 An Appellate Side lawyer often receives fees for briefs before they are worked out Even in respondents briefs, part-payment of fees fixed is always made by the clients when appearance is filed Usually when a lawyer on the Appellate Side is elevated to the Bench, his friends offer to work out his briefs and, so far as I know, this was always done as a matter of friendly consideration But I took a different view I said to myself "I am going to be on the Bench for nearly fifteen years, I do not want any of my friends to work out my briefs without payment because, though they would do so willingly and cheerfully without any consideration, I would subconsciously feel that I was under their obligation" So I told my clerk Banavadikar and my junior Desai to write to my clients informing them that, since I had been appointed judge, they should take their briefs back and choose their own lawyers and I gave

Banavadikar several cheques signed by me to enable him to return the unearned fees Banavadikar managed to transfer the briefs along with the fees to the lawyers named by the respective clients with the result that when I shifted from Bhatwadi to Mafatlal Park, 'operation transfer had been completed Some of my friends did not like this idea and criticised me very seriously and sincerely But I was absolutely convinced about the correctness of the course of conduct which I had adopted This made me poorer by several thousands of rupees, but in my view that consideration had no relevance to the propriety of my decision

In regard to the flat in Mafatlal Park to which I shifted, there is an incident which I ought to mention When I told Stone I would prefer to change my place of residence for obvious reasons, he got in touch with the State Government and the latter informed him that a flat in Mafatlal Park was available and the Government would requisition it for me if I approved of it Just then Bhagwati had delivered a judgment in which he had taken the view that the power exercised by the State Government requisitioning private flats was invalid, because the provision of law on which the power purported to rest was *ultra vires*

So I got in touch with Navinchandra, the owner of Mafatlal Park, and inquired when I could meet him He probably thought that I wanted to request him to allow Government to give the flat to me He said "Justice saheb, you need not bother to see me You can occupy the flat whenever you like ' I said 'Navinchandrabhai, it is very good of you to say so, but I am keen to meet you " He said "In that case, if tomorrow morning suits you or Saturday morning, come and see me at any time ' Accordingly I went to Navinchandra's bungalow on Saturday and told him that my purpose in meeting him was to inform him that Government was thinking of requisitioning

the flat for my sake "You may resist the Government's action, because recently a judgment has been delivered holding that the power claimed by the State Government to requisition is unconstitutional," I added On hearing this, Navinchandra was most agreeably surprised He said 'It is unusual for a judge to give such advice," whereupon I told him that I had seen him not as a judge but as a citizen I also added "I do not like to be forced on any landlord as his tenant by a Government order ' Then he generously and promptly said "In that case, be my tenant," and I said, 'if you really feel that way, I will be happy to accept your offer His final words were 'I would be proud to have a tenant like you" And so I went to flat C-11 as the landlord s private tenant Navinchandrabhai, and after his unfortunate premature death, his eldest son Arvindbhai, have consistently treated me with great courtesy and consideration

On the first day, I sat on the Bench with Justice Divatia The usual welcome speeches were delivered and I made a suitable reply I remember two points which I made in my reply They were that the courts were temples of justice in which judges and lawyers were both fellow-worshippers dedicated to the service of justice I also emphasised that, so far as the Appellate Side was concerned, our litigation was not of the very rich type which you saw on the Original Side and it was more concerned with the State legislation and the litigants were spread over the entire State, most of whom were illiterate and many poor As I sat on the Bench, the one thought that disturbed me all the time was that the delay made in the disposal of cases and the accumulation of arrears was bound to destroy the confidence of the public in the efficacy of the judicial process Somehow this concept of the obligations of the judges and lawyers to help in expeditious disposal of cases has been present in my mind

throughout my judicial career In retrospect I realise that this feeling made me somewhat impatient on occasions, but I worked hard and saw to it that no good point was ever lost in my court and that no bad point ever won It was my experience at the Bar that I sometimes won doubtful or bad points and with even one doubtful or bad point, litigants with weak or bad points are tempted to try their luck, and that makes litigation a gamble in the last resort

After I was elevated to the Bench, I had to pay a price for it by developing a little aloofness from my friends at the Bar In my time, the tradition was that the judges did not mix with the members of the Bar as freely as they would have liked to

At the Bar, A G Desai continued to be the giant as before It was remarkable that he was courteous and respectful to a new junior judge like me as to the most senior I would like to mention that among the congratulatory messages I received on my elevation to the Bench the two I valued most were the one from A G Desai and the other from D A Tulzapurkar These two friends in their separate letters wrote to me that it was the first time that they were congratulating anybody on elevation to the Bench, because they had no doubt that in appointing me, Government had chosen a really brilliant lawyer who was courteous, thorough and expeditious

At the Bar, the mid-seniors who were making an impact on the litigating public, and very favourable impression on the Bench, consisted of V S Desai, my junior, Tarkunde, Y V Chandrachud, the present Chief Justice of India, and D V Patel The other seniors whom I have already mentioned were thriving as before and were making their mark and commanding a good amount of work.

Tarkunde's advocacy was incisive He is an intellectual and has a philosophic concept of the theory of law

which he brings to bear upon the presentation of the cases where law points are involved His advocacy tended to be assertive, not so much persuasive, but in this assertiveness his advocacy never suffered from satire and was free from impertinence or rudeness to the court He was honest, polite and courteous but firm in the formulation and presentation of his points Tarkunde joined the Appellate Side Bar a little late in life, but he made an impact quick enough and became one of the busy mid-seniors He had been a colleague and follower of M N Roy throughout and believed in that great man's philosophy Tarkunde himself is a man of idealism and he was keenly interested in spreading Roy s message as much as he could even when he was at the Bar When he was appointed a judge, the age of retirement was sixty years Later it was increased to sixty-two But true to his idealism, Tarkunde retired as soon as he completed sixty and went to New Delhi to practise in the Supreme Court It did not take long for Tarkunde to establish his reputation in that Court and he soon came to be recognised as one of the leading lawyers of the Court and acquired a large practice But he was equally, if not more, interested in popularising his *guru's* philosophy and took over the *Radical Humanist* which was then being published from Calcutta as a weekly and, converting it into a monthly, established it on a sound basis This meant unceasing work of an intellectual type and personal expense to a large extent, but Tarkunde was not the man to grudge it He was soon regarded by all the intellectual Royists as their leader which position he undoubtedly deserves Tarkunde has championed the cause of civil liberty without fear and that work has justly earned him a place of prestige among our intellectuals He has been honoured with an award by the International Humanist and Ethical Union.

V S Desai was sedate, sober and balanced in the presentation of his cases He did not try to be eloquent and was content to formulate his points and refer to the evidence in sober terms and in a very fair and accurate manner Sometimes his sober advocacy would win against an attempt at eloquence on the part of his opponent D V Patel used to be full of humour, always smiling and took delight in making novel and ingenious points He was a clever lawyer and there was always substance in the arguments which he urged

Chandrachud was the youngest of the group combining eloquence with persuasiveness and thorough grasp of facts and law He would change his intonation according to the necessity of the argument and he would know precisely what manner of advocacy and what type of argument would make an impression on the judge he was addressing He has a very pleasant personality and the very first appearance he made before Chagla and me made a deep impression on my mind Turning to Chagla, I said 'Chief, this young lawyer is bound to go a long way" His advocacy attracted me though he knew that the decision of the case in my court depended not upon the attractiveness of the advocacy so much as upon the merits of the case Nevertheless, when I listened to this young lawyer's eloquent advocacy, I often used to tell myself that the excellence of the quality of his advocacy could best be described in terms of an English ditty which says

> "It is not the eye or lip, we beauty call,
> But the full effect and result of all"

Next in standing can be mentioned Bhasme and Vaidya Bhasme was a thorough-going tenacious lawyer who studied his briefs very well and presented his cases somewhat aggressively, whereas Vaidya would make an impression by his well-chosen points presented in a

persuasive manner Both made a deep impression on my mind As expected, both ultimately became judges of the High Court Bhasme has however recently resigned and is now practising in the Supreme Court Unfortunately Vaidya died prematurely

Gokhale, Sukthankar, Chokshi and Patwardhan, who were senior to the lawyers whose names I have mentioned just now, were in possession of good work Gokhale presented his cases as an academic man that he was, in sober, steady language, clearly, cogently and logically Patwardhan was more sober, balanced and almost judicial in the presentation of his cases At the Bar, S G Patwardhan and B N Gokhale were my personal friends Parvatibai Patwardhan, Indirabai Gokhale and Shalini were also intimate personal friends We used to go to Mahabaleshwar frequently together and spend our time very pleasantly during the summer vacation The Patwardhans and we went more frequently and during our stay at Mahabaleshwar we had a kind of reading bout We read by day and in the evening compared our notes We managed to read 20 to 25 books in a month Patwardhan is endowed with a genuine sense of humour and takes within the sweep of his intellectual activities Botany and Astronomy, his company always acted as a tonic to us all Both Gokhale and Patwardhan became judges of the Bombay High Court

Gumaste and Jahagirdar were the leaders of the Kannada Bar Next came Madbhavi Madbhavi rendered immense assistance to A G Desai as his official assistant Later, K G Datar from Bijapur joined the Bar and commanded large practice He was a very good lawyer and specialised in Watan Law and Hindu Law Later he became a judge, and so did Jahagirdar

Jayakar was a very distinguished counsel who

practised on the Appellate Side He was a Sanskrit scholar, endowed with an impressive personality, melodious voice and he spoke chaste English Jayakar was an ideal of what a persuasive advocate should be like, he was admired alike by both the Bench and the Bar He knew music and he enjoyed it I often used to go to his place to hear his entertaining and instructive talk In fact in course of time we became intimate friends though I was much junior to him in age

S G Chitale was another friend of mine His health was poor and so he had to struggle along In the famous Dharwar Bank Case, which was a heavy criminal matter, I requested him to act as my junior and saw to it that the client paid him a handsome fee Somehow I played a crucial role in two important incidents in Chitale's life—first in his being appointed the Principal of Government Law College and secondly in his being appointed as the first Principal of New Law College in Bombay established by the Deccan Education Society of Poona

Sukthankar had a distinguished academic career like Gokhale, and, like him got work somewhat late, but then was in a position to earn good quantity and quality of work and he did full justice to his cases Unfortunately he died prematurely

I have mentioned the names of a few lawyers which have easily come to my mind This is not to suggest that there were not many others whom the Bar regarded with pride J C Shah I have not mentioned in this chapter because he soon followed Dixit on the Bench and we became colleagues as judges

Young Datar from Belgaum and Malimath had begun to get good work and appeared quite often in my court Datar was persistent in his advocacy whereas Malimath was persuasive Both became judges of the Karnataka

High Court where they shifted after the formation of the new State of Karnataka Datar later resigned and is now practising in the Supreme Court

Chief Justice Stone, who was very happy that he was able to persuade me to accept his invitation, asked me to sit with him in the very first week after my elevation Stone was not a particularly brilliant lawyer, but he wanted to introduce method in the preparation of the boards for hearing cases and took steps in that direction which were effective The result was that lawyers knew when their cases were listed on the daily board, because a thorough system had been introduced by Chief Justice Stone in that behalf He was polite to the Bar though the members of the Bar did not get satisfaction that their points were quickly appreciated There is one light incident which I would like to recall One day, A G Desai was arguing a heavy appeal which involved questions of fact and points of law under the Khoti tenure After Stone asked Desai a few preliminary, superficial questions about the merits of the appeal, he realised it was going to be a longish affair He turned to me and said "Will you please take it up ?' I said, 'Of course, Chief, with pleasure" The shrewd Desai knew what passed between me and Chief Justice and so he began to address his arguments more pointedly towards me Stone did not bother He was however making copious notes and I wondered why he was taking such copious notes when he had asked me to deliver the judgment Out of innocent curiosity, I looked at his notebook and, to my immense amusement, I found that he was busy making a memo of the articles which he had to take with him when he went to Ratnagiri the next day In other words his mind was not in the appeal at all but was busy thinking about his official visit to the District Court, Ratnagiri. He did not know — and indeed I took care

that he did not—that I had noticed what he was doing So from time to time I used to whisper to him about the points which Desai was making and telling him my reaction in respect of them , and on every occasion he used to say "Yes, you are right, I agree with you The appeal went on for nearly a day and I told the Chief Justice that I was going to dismiss the appeal and he said 'Of course there is no substance in the appeal at all

Before Stone succeeded in introducing a proper system in the preparation of the appeal boards on the Appellate Side, the preparation of the boards had created many problems and sometimes whispers were heard that the clerk in charge of the preparation of the boards accepted money for keeping cases back or putting them on the board at an earlier date or before a particular Bench Stone introduced a method by which a monthly list was prepared and from that monthly list a fortnightly list followed, then a weekly list and from the weekly list cases were taken on the daily boards according to the serial order I remember that, when I was at the Bar, the then prevailing erratic preparation of the board caused considerable inconvenience to persons like me who had very heavy work It was not possible to anticipate precisely which case would come up on the daily board Of couse my clerk Banavadikar did, on the whole, organise the matter so as to cause the least inconvenience and when Desai entered my office as my junior, my task became easier Nevertheless I felt that a system must be introduced and that the preparation of the daily board must cease to be erratic That is what Stone achieved He was a good administrator whereas Beaumont completely ignored that side of his function

In the common room it was customary for all judges to meet during the recess hour. Some took their lunch,

some would have a cup of tea and some nothing at all But the atmosphere was pleasant and light jokes went round so that we did not know when the recess period was over During the recess hour Coyajee used to bring in the largest number of pleasant stories They were full of humour and without malice and everyone enjoyed them immensely Weston had a sly sense of humour He knew that Bhagwati hated the races whereas Chagla and Tendulkar were fond of them, Tendulkar much more than Chagla One day, Weston said to Chagla Chief what do you think of the idea that we should all join together and purchase a racehorse and enter the race in the name of the Chief Justice?' Everybody at once knew that it was a joke meant for Bhagwati, but Bhagwati did not realise that it was a joke and he said No, no, I cannot join the scheme at all, and he turned to me and said "Are you joining it? Everyone laughed and then Bhagwati realised that it was a joke and then himself enjoyed it most of all

Once when I was sitting with Lokur, Thakore and Amin appeared in one appeal Amin appeared for the appellant and Thakore for the respondent Amin was a very persuasive almost submissive, type of an advocate though beneath his submissiveness there was a commendable degree of persistence As he was opening the appeal, Thakore began to interrupt him He did that consecutively three times This was nothing unusual for Thakore though, of course, he bore no malice When Amin found that almost every fifteen minutes Thakore was interrupting him, he indignantly sat down and said "Unless the court protects me, I do not propose to proceed with my argument" In my impulsiveness, without consulting my senior colleague, Justice Lokur, I promptly said to Thakore 'Mr Thakore, you must apologise to Mr Amin for your interruption If you do not, we will not

hear you" Lokur was taken aback and he was whispering in my ear all the time 'Do not take Thakore to task, he will retaliate" I said 'Brother Lokur, leave it to me I know my Thakore very well," and it did turn out that I was right Thakore somewhat reluctantly got up and said in mild words As your Lordship desires, I apologise to Mr Amin In the court every advocate is entitled to the protection of the court from unnecessary obstruction from his opponent This was my firm belief and I adhered to it

In the matter of court manners, A G Desai was a model If he appeared for the respondent he would quietly sit in the court and take notes and you would not feel his presence until his turn came to make his reply But when his turn came and he began his reply, he used all his tricks and clever ways of persuading the court to accept his point and many times tried and succeeded too in taking the court down the garden path

When once I was sitting with A S R Maclean Desai began to address us in a very heavy Khoti matter Maclean was a great gentleman and never pretended to be a profound lawyer or jurist and, as a gentleman, he had made it clear to the Bar that he was not familiar with Khoti Law That was Desai s opportunity With his pleasant wily smile, Desai began his argument on a low key and Maclean began to put questions to Desai in a very responsive manner I then turned to Maclean and whispered in his ears "Brother, the process has begun Desai is smiling at you and you are smiling back at him and the respondent's lawyer feels that he has lost his case" "Is that really so?' asked the innocent Maclean I said "Yes'

As the argument proceeded, I began to put questions to Desai, which he found somewhat inconvenient to answer Maclean had a very strong common sense and

he was keen on doing justice When he found that I was cross-examining Desai, he turned to me and said 'Tell me, your questions are meant as much for Desai as for myself, isn't it ? You want to guard yourself against my falling in the trap prepared by Desai ?' I said 'Brother, to some extent it is true,' and he heartily and loudly laughed The members of the Bar merely thought I had cut some joke which Maclean enjoyed

I had already said that Weston had a very sly sense of humour Once he was presiding over a special appeal bench of which I was a member The case raised some constitutional points and had been referred to a Full Bench by Chagla Before the case was called out, Weston turned to me and said "Look here, brother, in your enthusiasm for case law, please do not persuade or allow either of the two lawyers to cite the very long judgment recently delivered by Bhagwati on the constitutional invalidity of the power to requisition I take it, you do not agree with that judgment and, in any case, I do not want to have to go through that elaborate judgment, distinguish it, or comment on it and reverse it ' There were other points in that case on which we based our decision and I carried out Weston s desire to treat Bhagwati's judgment as out of bounds so far as that case was concerned When both the lawyers in their turn tried to cite that judgment, I politely but firmly told them, slyly looking at Weston to whose left I was sitting, that we had read that judgment with the respect which it deserved but it did not deal with the points we were really concerned with and that made the judgment irrelevant When we rose for the recess, Weston patted me on the back and said "Thank you for your excellent performance, my good boy"

At my time, the members of the Bench constitutea a

happy family Once, however, a somewhat unhappy incident took place At lunch time, Stone turned to all of us and asked which of us was in charge of a particular case (which he mentioned) He added that 'one of the parties to that proceeding is an Indian prince who met me at the club and requested me to see if it would be possible to have the case disposed of early, because it had already lasted too long

That case happened to be on the board of Blagden As soon as Stone mentioned this case, Blagden turned to him and said 'Chief, this case is on my board Please do not repeat what you have said just now Otherwise I will treat it as interference with the administration of justice," and he appeared to be serious when he said so All of us including Stone were taken by surprise but, of course, we did persuade him not to take such a pedantic view and he agreed though not without reluctance That was how Blagden was made He had plenty of humour, but what would upset him and what view he would take in any matter, no one could anticipate

Chapter 9

INDEPENDENCE AND AFTER

On 15 August, 1947, Sir Leonard Stone realised that the time had come for him to leave the Court and he conceded that India would naturally and legitimately expect that the first Chief Justice of the Bombay High Court in free India should be an Indian Nevertheless, he conveyed to the authorities concerned that he would be willing to continue even in free India That, of course, was not to be and could not be, and Stone was disappointed to some extent But he showed no trace of disappointment in his behaviour or conversation with us or with members of the Bar or the public at large His demeanour was just as pleasant as before

On 15 August, we all, judges and lawyers, assembled at midnight in the big hall known as the Sessions Hall and Chief Justice Stone unfurled the National Flag and paid homage to it On that occasion, Stone made a speech which deserves to be reproduced Addressing the gathering, the Chief Justice said

"Our sentiments on this momentous occasion must, first, turn in prayer that this great endeavour may be crowned with happiness and success, secondly, in self-dedication by all the citizens of the new State in service to their State, in loyalty to its laws, and in human sympathy and kindness to all mankind, and thirdly, in rejoicing that the wishes and aspirations of the people of this sub-continent to be free and independent are being consummated, and that it is in the time of our lives that these things should happen, so that we are present to bear witness to them

"In one sense, we, who are assembled here, are performing a public function, in that as administrators of the law we form one of the great components of constitutional government But in another sense, this is a domestic occasion, for, we all, judges or lawyers or members of the High Court staff, have come with our wives, our relatives and our friends, to be present in our own building, to pass these solemn moments together and to do honour to the emblem of the Union of India There is a common bond of fellowship between us, for each of us in his appointed sphere plays his part in forwarding the cause of justice Perhaps in the hour of triumph, we may recall for a moment the memory of some of our illustrious predecessors, whose noble contribution to the cause of liberty and equity have built up a reputation in our court so that it stands high in the esteem of our fellowmen

"British and Indians, judges and lawyers, jurists and members of the staff have striven together as one united entity so that the honour and integrity of administration of justice may stand high in the realm of human rights

(*Aftet recalling the names of some of the past distinguished judges and lawyers of the Bombay High Court the Chief Justice proceeded*)

"There are but a few of the great men who have graced this Court with their learning and vitality, with their juristic acumen and forensic skill I am the last of a long line of English Chief Justices of the High Court of Judicature of Bombay, a court, which, with its predecessors, whose jurisdiction it has inherited and extended, dates back to 1672, and I am proud that, it is by my hand and at my command, that the banner of independence should be raised in and upon this court, and all its historic associa-

tions I thank you for this honour, which will be to me an abiding memory of your confidence

"This night the nations greet with goodwill and friendship, the Union of India, arising to independence, and I know that the good wishes of none can be so strong or so sincere as those of my own countrymen, for after all we and you have been long associated Let us mutually forget those chapters in our joint history which have not been happy, and let an abiding friendship endure between our two great races of freedom-loving peoples

"The hills of time stand before us They are shrouded in the mists of uncertainty and doubt which envelope a troubled world Go bravely, forward, fearless and undaunted, carry the torch of liberty high, so that this new India may be strong and happy, and enjoy the blessings of true freedom, and so that you may take your place in the councils of the nations, living at home and abroad in mutual trust and concord and at peace MAY GOD SO WILL '

At about 11 59 p m , the Chief Justice requested the gathering to stand in silent prayer for a minute At the stroke of 12, he unfurled the National Flag on the Flag-post Simultaneously, a larger flag was hoisted on the Flagstaff of the High Court building outside The Chief Justice, who was in full ceremonial Court dress, then saluted the Flag and other Judges, who were in bands and gowns, bowed before it[1]

When Stone departed, the question naturally arose as to who would be the first Indian Chief Justice Every one knew it was going to be Chagla Nehru was keen that Chagla should be the first Chief Justice of Bombay in Free

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1 P B Vachha, *Famous Judges, Lawyers And Cases of Bombay*, (First edition 1962 pp 105-107) N M Tripathi (Private) Ltd

India and he had conveyed his decision to B G Kher, Chief Minister of Bombay The only point about this decision was that it involved the supersession of Sen who was senior to Chagla Sen realised this himself, and so did we all, that there was no comparison between Chagla and Sen Sen was gentle, patient in hearing cases, responsive to all good arguments, co-operative with colleagues sitting with him, and he produced, though after laborious hearings, judgments which were undoubtedly readable He was a civil service judge and had many good points about him He was a great gentleman and every one liked him

For choosing the first Chief Justice, quite different considerations, however, became relevant and material Government had to choose a person who would maintain the excellent traditions of the Court and its position of prestige among all the High Courts in India Judged from that point of view, Chagla was the obvious choice Chagla was endowed with almost all the qualities necessary to make a brilliant lawyer, a successful judge, and then, as events proved to the satisfaction of every one, a successful, efficient, powerful, popular and independent Chief Justice He was a very good leader of his team, helped to create a democratic, friendly, co-operative atmosphere among his colleagues, tried his best and succeeded in carrying his colleagues with him in all major administrative decisions So far as judicial work was concerned, he was undoubtedly a judge of the first order No one could say that Nehru s choice was not fully justified and it was best proved when, during Chagla's tenure, the Bombay High Court retained its prestigious position in the Judiciary of India All of us, his colleagues, helped Chagla to the best of our ability

Sen had desired that he should be appointed Chief Justice for a short span of six months and then he would

willingly retire, though he had a much longer tenure to run. As he knew me very well, he approached me and asked me to make this request to Kher on his behalf. While making this proposal to me, he himself emphasised the fact that he was fully conscious that compared to Chagla he did not deserve to be the Chief Justice. But as he put it in his own honest and philosophic way: 'It is my vanity which prompts me to make this request to you.' I talked to Kher but Kher pleaded his inability to do anything in the matter since the Union Government had already made the decision and even Sen was not suggesting that the decision was otherwise not justified. I conveyed this message to Sen and philosopher that he was, Sen took it in a quiet and dignified manner and never once during his remaining tenure showed either disappointment or dissatisfaction. He co-operated with Chagla as willingly as all of us did and, be it said to the credit of Chagla that he treated Sen with great courtesy and consideration.

During Chagla's time, Rajadhyaksha and I were appointed Administrative Judges by Chagla. In the disposal of administrative matters, Chagla was perceptive and quick. When he left certain matters to us, he rarely, if ever, interfered with our decisions though we discussed every matter freely and fully before we came to any conclusion. During this period we tried the experiment of recruiting District Judges directly from the leading members of the District Court Bars. Accordingly, we invited a few leading members from the district Bars and the whole court interviewed them. That was Chagla's democratic way of doing things. As a result of the interview we appointed Shreekhande from Belgaum, Alabal from Bijapur, Malimath from Dharwar and Ghaskhadbi from Dhulia, Desai and Bhatt from Gujarat and Bakhale from Satara as direct District Judges. So far as I know, this experiment succeeded and

new recruits brought a fresh outlook to bear upon the performance of their duties

Similarly, when Assistant Judges had to be appointed, we called the eligible Subordinate Judges, and on some occasions, members of the Bar were interviewed Again the whole court sat and made the selection Of course, there was a full discussion about the merits of every interviewee and many of us asked the interviewees questions and tested their eligibility from the answers they gave Not that there were no occasions for difference of opinion or approach, but the atmosphere being friendly and cooperative, Chagla tactfully always managed to carry all his colleagues with him in the end

There is one significant incident which I recall The Government of Bombay had passed an Act for effecting separation between the Executive and the Judiciary and transferring the jurisdiction over all the magistrates to the High Court just as the High Court had jurisdiction over all the civil courts The Act was sent to the Union Government for approval, but Vallabhbhai Patel, Union Home Minister, sat on the Act and did not accord approval In fact it was reported that Vallabhbhai indirectly suggested to Morarji Desai, who was the Home Minister of Bombay, not to be in a hurry to make the change, but Morarji, who is a man of principles, brought about the change in substance and effect though the Act had not received the approval of the Union Government Morarji wrote to the High Court that, though the Act had not strictly become the Law of the State owing to the absence of approval of the Union Government, in actual practice this High Court could take it that the separation had been effected and it could act accordingly Morarji s administration had many good points and this was perhaps the most striking feature which brought about the change regarded as revolutionary

at that time He consistently and uniformly refused to meet any member of the judiciary with any grievance and advised him to meet the Chief Justice or the Administrative Judges

After the separation was thus unofficially but effectively introduced as an Administrative Judge, I was dealing with the entire magistracy and was directing their transfers and passing orders in regard to everything else pertaining to their service, in consultation with Chagla and Rajadhyaksha The selection of Subordinate Judges as well as the Magistrates was made by the Public Service Commission When the Commission was going to select Judges and Magistrates, one of the High Court Judges attended its meeting Godbole was the Chairman of the Public Service Commission He was a retired Civil Servant with the Union Government but he believed genuinely in the independence of the High Court and the convention which he consistently followed was that, so far as the selection of Civil Judges and Magistrates was concerned, the advice of the High Court Representative would decide the matter if the view of the High Court Judge was against the view of the other members of the Commission Thus in all administrative matters the High Court firmly established its independence and was careful to see that its reputation did not suffer from any lapse on its part or on the part of the subordinate judiciary or magistracy

There is one incident about Morarji Desai which it is worthwhile narrating A S R Chari, a member of the Communist Party of India, along with others had been detained and as a detenu he was arguing his petition before Chagla and me That was the first time I saw Chari He argued the appeal absolutely like a first-class lawyer, introduced no politics and urged only legal points,

He was trying his best to persuade us to consider whether the allegations on which his detention was justified were true We were all the while telling him that the truth of the allegations was not for the Court to consider, that was specifically barred, and that what we had to see was, assuming that the allegations were true, whether the detention was justified or not, and there was no doubt that if the allegations were true, his detention would be justified

While arguing this point, I jocularly said to him "Look here, Mr Chari, the law is so drastically worded that even if some sub-inspector were to make similar allegations against me and they were accepted by the authorities competent to pass orders of detention, no one could save me, not even Chief justice Chagla ' This was of course meant as a light-hearted remark Judicial work is hard and difficult, it need not be made more so by a stubborn attitude and approach, and a little sense of humour once in a way should be permitted That was what I wanted by making the remark in question

The remark was reported to Morarji and at night Morarji rang up Chagla and said ' What has your colleague done? He has made a very satirical remark which might bring the Government into ridicule ' Chagla tried to explain to him that it was only a light-hearted remark and nobody took it seriously as it was not intended to be taken seriously at all

Next morning Chagla told me "Do you know what your Morarji has done? He rang me and complained against your yesterday's humorous remark You better talk to him" That night I rang up Morarjibhai I said "Morarjibhai, I have been always telling you that you should cultivate a little sense of humour in your otherwise rigid, strict and stubborn and straight life You do not

seem to accept my suggestion Otherwise you would not have complained to Chagla The remark was meant as a humorous joke and was taken by everybody in the court in that sense Please do not read into the remark any intention of mine to bring the Government into ridicule You know my views in this matter and, I am sure, it was wrong on your part to have rung up Chagla and complained about my remark How many times have we argued about prohibition? I have always told you that prohibition can never be enforced by law and you have retorted that I am a cynic But such discussions are not to be taken as intended to cast any aspersion on the Government at all" However, Morarjibhai will be Morarjibhai, and we have been good friends and will continue to be so all the time

After Morarjibhai became Prime Minister and began to enforce prohibition, I wrote to him in the same old terms and warned him that it was futile to seek to enforce prohibition by law and it would never succeed True to his nature, he sent his prompt reply repeating his firm belief that it would succeed, notwithstanding my cynicism After all, no one can deny that Morarjibhai is consistent whether he is right or wrong

Among my colleagues, I would like to mention Rajadhyaksha and Bavadekar in particular Bavadekar and I took oath on the same day and our judicial career began simultaneously My experience has shown that the Bench is not the place where deep, sincere and lasting friendship can be formed Judges were colleagues, courteous in their behaviour towards each other, co-operative, polite, but warmth of human friendship does not necessarily flourish in that atmosphere However, Bavadekar was an exception He was so essentially human and, on the very first day, we became friends I can never forget the very

happy memories of my friendly intimate association with him Bavadekar was humble, humane, logical and basically a mathematician The first day that he and I sat separately as single judges, Bavadekar asked me Tell me, Gajendragadkar, how much time should I give to an appellant s counsel to open the second appeal?,' and I said 'Say about thirty minutes so that he should be able to formulate his point of law That day during the recess, when we met in the common room, he turned to me and said Look here, your V S Desai is opening a second appeal and I have given him twenty-five minutes already, five minutes more and he will have to sit down ' I said 'Bavadekar, that is not what I meant Has he been able to formulate his points of law or not? Do not be arithmetically accurate in the calculation of time available to appellant's counsel He smiled in his characteristically innocent manner

Bavadekar also being a logician was always impatient to test the arguments of the counsel without permitting them time to develop them fully The result was he was sometimes apt to talk a little too much But every one knew that he was a judge with a kind heart and a humane approach and nobody minded the impatience which he showed during the course of the hearing He was intensely keen in finding the truth and doing real justice to the parties and that, according to him involved necessarily a logical testing of the rival arguments and contentions But the way he did it sometimes stopped the process of the development of points by the members of the Bar He was completely unaware of this result

S T Desai was developing a point when Bavadekar started firing questions at him The process went on for nearly fifteen minutes—the judge asking questions and

the lawyer trying to answer them Then Bavadekar turned to Desai and said "Well, Mr Desai, you can resume your argument" Desai was obviously annoyed by the interruption in his arguments and he wanted to convey his annoyance to Bavadekar and so, in a very polite way, he said "My Lord, give me two minutes to recall the point which I had been arguing, because as a result of the several questions which you asked me, I have forgotten what point I was arguing" Bavadekar in his typical innocence said "No, Mr Desai, you need not bother to make an attempt to recall the point that you were arguing I will tell you that you were making your submission on limitation" Even Desai enjoyed the situation So innocent was Bavadekar at heart

Once Bavadekar and Vyas were sitting on the Bench and a somewhat difficult question of *res judicata* was being argued before them Bavadekar began to fire questions at the appellant's counsel and the process took as long as two hours Then the arguments were resumed At this stage Vyas, who was a junior colleague of Bavadekar on the Bench, turned to him and said, "Brother, I want to ask one or two questions, may I?" It was of course polite on the part of Vyas to have asked for Bavadekar's permission to put the question He might as well have put the question but what was Bavadekar's response? He said "Vyas, do not ask too many questions, that may interrupt the argument of the counsel" Bavadekar had not realised that having interrupted the counsel for two hours, he was cautioning his colleague not to interrupt the counsel even for asking two questions This story travelled on both sides of the Bar With all this, Bavadekar was universally liked and admired by the members of the Bar, because they knew that he was completely impartial and independent and brought to bear upon every problem the working of a logical mind.

Another story which I recall also shows how simple Bavadekar was He and Chainani were hearing a murder appeal, which was a somewhat sensational case, in which a senior police officer had been murdered while he was attending a music party in the house of a dancing girl on the second floor The story was that there was some skirmish during which the police officer was thrown down from the second floor through the window and died as a result of injuries suffered by him The case had a chequered career but that part of the story is irrelevant for my purpose I am only concerned with one argument which was vehemently urged before Bavadekar and Chainani, and that was that the evidence which purported to show that the victim had been thrown through the window could not possibly be true because he weighed nearly 170 lbs Bavadekar was not impressed by that argument but Chainani was, and it was in a sense an important argument

So Bavadekar turned to Chainani and whispered 'Look here, Brother, can Gajendragadkar be thrown through the window by two hefty men?' And Chainani said "Of course, he can be,' and then Bavadekar added with a chuckle 'Well, Gajendragadkar weighs 175 lbs" Chainani was satisfied that the evidence was true

When we met in the chamber for lunch, Bavadekar turned to me and said, "Brother, today you rendered singular service to the case of the prosecution in the famous criminal appeal we were hearing' "How did I do it ?' I asked, and then, to the merriment and amusement of all of us, he told us the story That was Bavadekar As I look back, my mind goes to those days when I had the pleasure and honour of enjoying his warm and hearty friendship

Bavadekar taught me golf As we did not get admission in the Willingdon Club straightway, we joined

the Chembur Club Bavadekar drove his own car and twice a week we used to go to Chembur to play golf My golf was of a very unsatisfactory type, he played a much better game But he was determined to persuade me to become a golf addict, as he used to call it, and so while playing with him he would give me lessons

One Saturday, after playing the game in the afternoon, we were returning in the evening At that time there were communal riots and an order had been issued by the Police Commissioner prohibiting the carrying of *dandas*, lathis or any deadly weapons As we reached the town, a police constable stopped the car and, looking at the golf clubs and not knowing what they were, he thought that they were deadly weapons and said "Don t you know the order of the Police Commissioner ? How are you carrying these deadly weapons ?" We tried to explain to him that they were not deadly weapons but clubs with which golf is played He said "I do not believe it," and ordered us to accompany him to the police station Fortunately about that time a sub-inspector happened to pass by The High Court was then trying sessions cases and both Bavadekar and I had sat for Sessions The sub-inspector on seeing us saluted us, because he recognised us since he had given evidence before us He said "Why is your car stopped ?' and we told him the story The sub-inspector turned to the constable, rebuked him and asked him to apologise to us Bavadekar told the sub-inspector "Don't blame the constable He was merely doing his duty Next day's *Evening News* carried the news as a box item and our addiction to golf became the news of the town

Bavadekar was devoted to his old father He had not married and his unmarried sister Sumitra looked after

him Brother and sister were devoted to each other Bavadekar's father, who stayed in Kolhapur, became rather seriously ill and so he went to Kolhapur and brought him over to Bombay On the way, when they got down from the train at Poona in order to take the train for Bombay, his father wanted some tea and biscuits to eat Unfortunately that day had been declared a *hartal*, all station stalls were closed and no *hamals* were available Undaunted Bavadekar walked out of the station, went to an Irani tea shop, made a deposit and took a tray with a pot of tea and a packet of biscuits and brought it across the road to the station where his father was seated Someone who saw him taking the tray in his hands rushed to him and said "Sir, what are you doing ? Give that tray to me, I will take it for you" Bavadekar said 'No, my dear man, I am taking it for my father and the credit of doing this service to my father I cannot deny to myself" That was Bavadekar

His father stayed with him until his death So long as he was with him, Bavadekar declined to accept any social engagement and except for the five hours in court he was continuously attending on his ailing father As fate would have it, when his father expired suddenly, he had gone out for some urgent work On his return he found that his father was dead By then, I had reached his bungalow When he returned, he wept bitterly like a child and cried that he was not near his father when he breathed his last I said to him "Brother, you have done your best to serve him and that must have given him full satisfaction and must have made him proud of you and your sister' But this consolation did not assuage his grief

Later, when I lost my elder brother, Prof A B Gajendragadkar, Bavadekar came to me, took my hands in

his and wept He was not able to speak a word to console me At last he managed to speak in whispers 'Brother, I understand what you are feeling Please remember that you have another brother who shares your sorrows" I could not restrain my tears when I heard this from a person who was nearer and dearer to me than my relatives

When I was promoted to the Supreme Court, I went to see him I was myself a little embarrassed because my promotion meant his supersession, technically he had been given the oath of office before me and as such was my senior He saw on my face a sense of complete embarrassment and said 'Do you really not know me? Do you not realise that I knew that everyone else did think that you were the obvious choice ? Why do you feel embarrassed? All I say is, take care of your health, because the Delhi climate is treacherous and you are not used to it" That was the last I saw him[2]

Later, when the Panshet disaster took place, Chief Minister Y B Chavan requested me to recommend the name of a retired or sitting High Court Judge to hold the enquiry into the disaster I asked him "Do you want the enquiry to be a whitewashing affair or do you really desire that it should be a piercing, thorough enquiry whatever its conclusions may turn out to be on the evidence produced before the Commission ?" "I am serious that it should be a thorough enquiry," said Chavan "In that case," I replied, Bavadekar is your man" Chavan immediately responded by saying 'That was the name in my mind I wanted your corroboration," and so Bavadekar was appointed the Commission of Enquiry

2 Obviously as a judge of the High Court Between 1957 and Bavadekar's death, Gajendragadkar and Bavadekar did meet, though not very often, at Bombay —*R A J*

I did not know what happened thereafter, as I was in New Delhi, but owing to some incident which took place during the preliminary stage of the enquiry, Bavadekar's mind probably got worked up, his blood pressure shot up and, I understood, his mental balance was so disturbed that he committed suicide When the news reached me, I wept like a child I could not get sleep for a week, thinking "It might be that, by my recommending Bavadekar s name to Chavan, I was indirectly responsible for this catastrophe No final word on the cause of his suicide has come to light The thought, that I would never meet Bavadekar again and enjoy his innocent jokes, disturbed me then and disturbs me even now Let me offer my tribute to the memory of my respected friend

Rajadhyaksha was a gentleman to the core Born in an artistocratic family, he was soft-spoken, gentle in his approach, polite in his manners and thorough in his work as a judge He never spoke a harsh word in court, nor ever raised his voice in asking questions of the lawyer He took extensive notes with the result that, when he pronounced his judgment, not one point whether important or unimportant was left untouched He was universally admired for his thoroughness, his unfailing courtesy and his innocent smile

Rajadhyaksha was requested by the Union Government to take up the work of the Bank Commission and, when he received that request from C D Deshmukh, who was then the Union Finance Minister, he walked across to my flat from the adjoining building in Mafatlal Park and showed me that letter He was naturally very happy However, he had hardly commenced his work when he suddenly died of heart failure and it became my painful duty, under pressure from numerous friends, to continue

the work which he had left unfinished I did so with a heavy heart, under a sense of compulsion[3]

The only time when Rajadhyaksha was a little disturbed was when Bhagwati was promoted to the Supreme Court because he was Bhagwati's senior He did not disclose his disappointment to any one except me and, even when mentioning it to me, he said "I can quite understand that promotion to the Supreme Court is not a matter of right and the Chief Justice of India might have felt that Bhagwati was more eligible than I I told him that this was a matter of chance and he should not bother about it After all, I said, he knew how much the Bar and his colleagues on the Bench liked and admired him And this gave him some satisfaction

It appears that the news about Rajadhyaksha's grievance reached Delhi and the Chief Justice wrote a polite letter to him informing him in very generous terms that the promotion of Bhagwati in preference to him was not because he was not eligible to occupy a seat on the Supreme Court Bench — in fact he was pre-eminently qualified to be on the Bench of the highest court of the land—but he and his colleagues had decided that civil service judges should not be brought to the Supreme Court Though Rajadhyaksha questioned the propriety or wisdom of this decision, the letter considerably mollified him

As every one knows, thereafter several I C S judges have adorned the Bench of the Supreme Court — S K Das, Wanchoo, K C Das-Gupta and Ramaswami, for instance It is, however, not unusual that the conventions established during one regime do not continue during the next The new Chief Justice may have his own

3 Before this, Rajadhyaksha had with distinction completed the first Press Commission assignment —*R A J*

views and may succeed in persuading his colleagues to change the previous convention Besides, ultimately in the matter of appointments to the Supreme Court, the Chief Justice alone is responsible, though usually he consults some or all of his colleagues, according to his choice Nevertheless, after Rajadhyksha received Chief Justice Patanjali Sastri s letter, his hurt feelings were somewhat mollified Of course, he felt, and I agreed with him, that it was unreasonable to put a total ban on the appointment of I C S Judges of the High Courts to the Supreme Court despite their good or even brilliant record In fact, as I have just indicated, that convention was broken within a short time

Blagden, to whom I have already referred in connection with a very unusual incident between him and Chief Justice Stone, was in many ways a class by himself His method of writing judgment was peculiar Once, in a heavy case, where a star witness was a lady, he began his appreciation of the evidence of the lady by devoting one full paragraph to her handsome features and to her wonderful dress which had no relevance to the evidence itself Then he considered her evidence and, at a certain stage, observed that, after giving that evidence, recess intervened and, lo and behold, when she stepped into the witness box again, she gradually and imperceptibly began to go back on her earlier evidence This, Blagden described as the exercise of the ladies' well-known right to change their mind He explained that because ladies change their mind and sometimes capriciously, they are called fickle-minded This account should hardly have found a place in a judgment But it was typical of Blagden

We had another judge, Blackwell, who was a good lawyer but had a peculiar way of speaking with gesticulations, emphasising almost every word In one case, which he was trying, he had to deal with some complex

problems of Muslim Law A mid-senior counsel, who appeared for the plaintiff, began by saying 'My Lord, this case raises for your decision some complex questions of Mohammedan Law May I seek your permission to read relevant passages from Mulla's *Mohammedan Law*, where the author enunciates the relevant propositions with his characteristic lucidity ?" "No,' thundered Blackwell, "I do not approve of this method You formulate the propositions in your own words' 'As your Lordship pleases, said the counsel and formulated his points At the time he was arguing, the defendant was represented by a junior counsel because his senior was engaged in another court In due course, after the plaintiff s counsel finished, the senior counsel of the defendant stepped into the court and in a majestic way put it to the judge My Lord, this case, as you have seen, involves very intricate questions of Muslim Law and I think it would be better if your Lordship sees how these propositions are formulated by Mulla 'Of course, said the judge, ' that is precisely what I want," and so the passages were read The whole court realised the absurdity of the attitude of the judge, but he was completely innocent of the contradictory stands he had taken in rebuking the mid-senior counsel but yielding to the senior lawyer

In the Bombay High Court, since the time of Sir Lawrence Jenkins, it has been customary for the Appellate Court not to deliver judgment when First Civil or Criminal Appeals are summarily dismissed The expression "summarily dismissed" is apt to create a wrong impression It technically means "dismissed without delivering a judgment" The Supreme Court, however, thought that summary dismissal was really summary and in one judgment advised the Bombay High Court — it was almost a lecture to us — that we had to write judgments and not summarily dismiss appeals Until I

left the Bombay High Court, we adhered to our practice notwithstanding two or three instances in which the Supreme Court repeated that view[4]

The judges, who had adorned the Supreme Court Bench when the court began its career, were giants but most of them were civil lawyers and they did not appreciate that summary dismissal was ordered after a careful reading of the judgment and the address by the lawyer, raising several points in favour of the appellant, followed by a full discussion There was nothing unusual about it The reason is that our criminal boards used to be so heavy that if we were to write even short judgments in every single case which we dismissed after hearing elaborate arguments, it would have delayed unduly the disposal of criminal cases

So far as first civil appeals were concerned, normally regular first appeals used to be admitted But sometimes when there was nothing in the first appeals, we did not hesitate to dismiss it summarily' Later, however, we made a rule that a single judge should admit first appeals, but if he was inclined not to do so, he should refer such matters to a Division Bench This reference of first appeals to a Division Bench meant that the judge, who was making the reference, was not inclined to admit them So, the advocates appearing for the appellant were ready with the reference books and relevant documents on which they relied to argue the matter more fully and these were fully considered before the final orders of summary dismissal were passed I do not know what practice the Bombay High Court now follows It may be that in consequence of repeated notes of caution bordering sometimes almost on reprimand from the Supreme

4 The Supreme Court has repeated that advice several times thereafter —*R A.J*

Court the Bombay High Court might have fallen in line and begun to write judgments supporting summary dismissal[5]

In one of the early judgments the Supreme Court expressed the view that failure to examine the accused person thoroughly under Section 342 of the Criminal Procedure Code vitiated the conviction This judgment almost took our breath away, because all the High Courts have correctly held that failure to ask one or two questions under Section 342 of the Code did not affect the conviction After all, a general question was put at the end of the examination of the accused under that section and he should state whatever he wanted Besides, putting too many questions to the accused under that section might amount to his cross-examination and that was totally inconsistent with the object of Section 342. Fortunately later, the Supreme Court itself modified its view

In its early years, each one of the learned judges of the Supreme Court used to write separate judgments even though they all concurred with the final conclusion A judgment of dissent is a necessity, of course, but a judgment of concurrence is not necessary unless the judge delivering the concurrent judgment has some special point of view which he has not put forward at the conference of the judges, so that it could have been included by the judge who delivered the judgment of the court The early judgments also tended to be very long and, as often happens when different judgments give very elaborate reasons in support of the same conclusion and meeting the same arguments, the difference of approach imperceptibly creeps into these judgments, and that gives rise to all kinds of arguments as to which view

5 As a matter of fact, the judges of the Bombay High Court have not done so except in some very rare cases —R.A.

of the concurring judgment was the view of the court and as such was binding on the High Courts The result of this long and, in some cases, somewhat inconsistent concurring judgments, was that in one case when the point covered by these concurring judgments arose before the Supreme Court, Mr Justice Vivian Bose, with his typical lucidity, had to undertake the onerous task of summarising briefly but clearly in the form of definite propositions what had been decided in the earlier case by different judgments I am making these statements with utmost respect to the court but I thought in fairness to myself and my colleagues at the Bombay High Court, I should state the difficulties we faced in the early stages of the Supreme Court when elaborate and different judgments were pronounced Later, during the tenure of Chief Justice Das and during the period I was the Chief Justice, this tendency was on the decline and in a majority of cases only one judgment was delivered by the court and it was only the dissenting judge who wrote the dissenting judgment, no other concurring judgments were usually written However, after I retired I have found that the tendency to write concurring but separate judgments has made its appearance again, maybe because the questions involved were very important and the judges wanted to express their individual views on their own With new judges new traditions inevitably arise

It is true that the House of Lords in the United Kingdom and the Supreme Court in the United States of America more frequently deliver separate judgments, whereas in the Privy Council only one judgment is delivered, but the Privy Council only tenders advice to His Majesty and that is a distinction which is relevant I felt and continue to feel that it would be better if the judges of the Supreme Court in our country held a conference in the important cases and the presiding judge asked one

of the judges to deliver the judgment Multiplicity of judgments dealing with the same point, covering the same grounds and taking the same view are likely to create confusion That was my fear when I was in the Bombay High Court and most of my colleagues, I thought, felt the same way

The Supreme Court has to deal with criminal appeals which are brought before it either as a matter of right under Article 134 or by special leave under Article 136 In regard to the latter category of appeals, the court is generally expected to interfere with the order under appeal only if it raises some important question of law which it must decide, or the conclusions of fact are patently unreasonable and the court feels they should not be allowed to stand This approach is sensible enough and is fully justified by Article 136

On some occasions, the Supreme Court interferes even in questions of sentence, having confirmed the order of conviction, describing the said judgment or order as fully justified I remember a case in which my judgment was taken in appeal to the Supreme Court It was an elaborate judgment and the Supreme Court was gracious enough to pay a compliment to the manner in which the judgment presented the court's point of view In the result, the order of conviction was confirmed Then as to the sentence, the Supreme Court observed that the court generally did not interfere with orders of sentence unless they were perverse or unduly severe or harsh In the case in question, I had confirmed the sentence passed against the accused by the trial court, which was three years Having said that the Supreme Court did not normally interfere with the orders of sentence, Chief Justice Das proceeded to reduce the sentence from three years to two years and six months only This judgment had

been pronounced a few months before I joined the Supreme Court

When we happened to talk about the approach which the court should adopt in regard to special leave petitions in criminal matters, Chief Justice Das emphatically observed that the Supreme Court should not interfere with sentences and even on merits, any interference should be confined to the cases where the finding was so erroneous as to deserve the description of being perverse Then I thought I got an opportunity for which I was waiting I turned to Das and said "Chief, I entirely agree with you in this respect, but may I know how you, recently, reduced the sentence of three years passed by the trial court, and confirmed by us in the High Court, to two years and six months ? What question of principle was involved in this reduction ?" Chief Justice Das, who was very kind-hearted, turned to me and said "Look here, I can quite understand your anger," and I immediately said 'No, no I am not at all angry In fact a judge has no right to be angry if he is reversed erroneously either on merits or even on sentence" But he continued "Look here, when the appeal was heard and we indicated to the lawyer that the judgment was very satisfactory and we wanted to confirm it, the lawyer piteously appealed to us at least to reduce the sentence and all of us were moved by his piteous appeal and, as a gesture of compassion, we reduced the sentence from three years to two years and six months" I then told the Chief Justice "I fully appreciate your compassionate approach But it is not always safe or appropriate to interfere with a judgment under appeal only on the grounds of compassion In cases where the High Court judgment under appeal has received a compliment from the Supreme Court, the High Courts are naturally perplexed to see that in such a case, sentence is reduced from three years to

two years and six months and that is what we in this court should not forget Whatever we decide is the law binding on the country and even our *obiter* observations cannot be ignored by any court in India We must therefore carefully weigh our words before we use them in our judgments" Chief Justice Das had a great sense of humour He turned to me and said 'Gajendragadkar, I have read many of your judgments and, in fact, it is because I liked your judgments that you have become my colleague Let me see now how you follow your own view which you have so eloquently expressed just now' In retrospect, I wonder whether I have departed from the principle which I had then expressed I hope not

I must now refer to Weston again I have already mentioned Weston in regard to his joke about judges joining together to purchase a racehorse and join the Turf Club as racehorse owners Weston enjoyed making light-hearted jokes like this, though always retaining a very solemn face Talking about the correspondence with his parents, Weston once said that his parents were anxious to hear from him frequently because he was their only son He had, however, adopted a device to satisfy their desire and save himself the trouble of writing too many letters, and then went on saying "Because I am personally very indifferent in the matter of correspondence, what I do is every Christmas I write a fairly long letter addressed to my father, and my handwriting being what it is—extremely illegible—it takes both of my parents one full year to decipher that single letter ! So they have the satisfaction of reading my letter all the year round and I have the satisfaction of not having to write too many letters !'

As soon as Weston told this joke, I said "Weston, that reminds me of a Sanskrit couplet If you

permit it, I will recite the couplet and translate it for you" "Of course, please do,' exclaimed Weston Then I recited the couplet This couplet relates a dialogue between two newly-wed young girls in which both the girls boasted about the cleverness of their husbands respectively

चतुर सखि मे भर्ता परेण लिखित स्वय न जानाति ।

said one girl The other replied

चतुरादपि चतुरो मे स्वयमपि लिखितं स्वय न वाचयति ॥

The first girl said 'My husband is so clever that he cannot read what is written by another person ! The other girl boasted "My husband cannot read what he has written himself !" There was laughter in the Common Room and Weston said in his typical wry humour 'I belong to the latter category Sometimes I am unable to read my own handwriting !

Weston was a late riser Some of us used to play golf fairly regularly twice or thrice a week, though our game was of a very indifferent character S T Desai who joined us as a judge was an exception, he played a very good game Once we decided to go to Chembur one Saturday to play golf, then have a bath and enjoy a cup of tea and return home in the afternoon But we had to start very early and somehow we persuaded Weston to join us We took the precaution of ringing him up very early in the morning to make sure that he got up from his bed in time When we reached his bungalow, he was ready in his shorts with the golf kit in his hands It was a fine winter morning and the sun was just rising As he entered the car, Weston said 'Is that what you blokes call sunrise ? I have never seen the sun rise because I usually get up at 8 o clock"

On the merits of a case, Weston was a sound judge

His common sense was strong and his capacity to evaluate the arguments urged before him was really uncanny His knowledge of fundamentals of law was remarkable though he did not care to be very familiar with case law and did not know very well the provincial laws either But that created no problems for him, because his mind was very perceptive and, as soon as a point was mentioned and argued on both the sides, he knew how to decide His judgments were short and pithy, but generally correct and sound He always used to say "I do not write for posterity," and in saying so he would wink at some of us who were eager to have their judgments reported

Weston was later promoted as Chief Justice of the Simla High Court which was established after partition Rajadhyaksha and I happened to go to Simla during one vacation and we met Weston He was the same as before, full of humour and mirth We talked of old times in Bombay and he told us all about the new High Court which he had helped to establish on firm foundations He was very popular because the lawyers and judges were satisfied that he was an independent judge and would not tolerate any interference from the Executive He was very pleasant with his colleagues and impartial in the administration of justice, both in his judicial and administrative work

Another judge whom I would like to mention with affection and respect is Lokur Before he became a District Judge, he had a lucrative practice at Belgaum and was also a Government Pleader there As a District Judge he established a very good reputation and his promotion to the High Court was treated by every one as due to him solely on merits His knowledge of case law was phenomenal So was his knowledge of statutory law He was very polite on the Bench and his judgments gave

satisfaction to the lawyers and litigants alike. When in the Common Room any vexed question arose in the administrative sphere, Lokur could produce a detailed, well-informed note on the topic the next morning. He was very industrious and his life was very well regulated. He was in a sense an ideal judge and when he retired all of us missed him. His relations with me were particularly cordial because he knew our family and we all knew him and his sons before we came together on the Bench.

Work on the Bench is more onerous than at the Bar. At the Bar you work out your briefs and put your points before the judge and leave him to decide. Your responsibility is over when your points are properly placed before the court. You do not have to consider whether your points are absolutely right or not. In fact, you need not overjudge the merits of your points. When the lawyer's work is over on both sides, the judge's work begins and the process of decision-making involves consideration of the pros and cons on both sides. Where truth lies on facts and which interpretation of an obscure piece of legislation should be preferred are matters which cause anxious consideration to a conscientious judge. He is always aware of Learned Hand's warning of judicial fallibility and is anxious to avoid, as far as he can, any error creeping into his verdict.

Besides, the Bombay tradition is that judgments are delivered in the court room itself as soon as the arguments are over. They are rarely reserved. In fact, in my ten years' tenure on the Bench of the Bombay High Court, I do not think I reserved more than ten judgments, and these also were reserved either because they were not fully or satisfactorily argued or because their decision involved consideration of Sanskrit texts, or too many judicial decisions, and I felt it would be better if I did it in

my chamber rather than in the court. The effect of the Bombay tradition is that a judge has to be all attention when the case is argued, otherwise if you reserve judgments, you may or may not carefully follow the arguments, because your real process of thinking begins when you take the brief on your table at home. In the case of lawyers who are not elaborate, a judge has all the more to be careful lest in moments of absent-mindedness he should miss a point which the lawyer has urged.

The advantage of this process is that you hear the arguments carefully, test them by asking searching questions, and compare the merits of the arguments on both the sides. It is a kind of subtle, perceptive, truth-finding, judicial cross-examination and that, properly done, enables the judge to arrive at his conclusion before the hearing of the case concludes. That at any rate is my experience. Once you develop the habit of delivering judgment on the spot, you rarely have any occasion to correct your judgment. I do not think I corrected my judgments after they were dictated. If in the dictation, which I gave, any minor error of fact crept in or reference to any evidence was inaccurate, my stenographer would put a query in the margin and that was all I had to consider.

Tradition about judgment writing differs from court to court, but on the whole I am satisfied that the Bombay tradition is the best. I do not think that this tradition is affecting the quality of judgments of our judges. Every judge has his own style, and whether he writes the judgment at home or delivers it in the open court, the style is bound to be the same and the method of approaching the points in dispute between the parties before reaching your decision is not likely to differ, whether you dictate the judgment in court or in the privacy of your chamber. In

either omit a point or commit a mistake, the lawyers are there to correct you and that avoids what is usually described as speaking to the minutes

When as a senior judge I presided over a Division Bench I made up my mind that the best way to get maximum help from my junior colleague was to respect him and give proper consideration to the points which he might suggest Even if the points he suggests do not appeal to you *prima facie* as reasonable, you must discuss them with him in a friendly and co-operative manner without assuming any superior tone and either satisfy him or be satisfied yourself On several occasions, junior colleagues have given me points which were very helpful, and sometimes even saved me from committing errors The way to keep harmony on the Bench and earn the respect of the Bar is to satisfy the Bar that the Division Bench is a Bench of two and not a Bench of ten as members of the Bar sometimes, sarcastically used to describe some Benches when I was at the Bar The senior judge was symbolised by figure I' and the junior by figure O A senior judge, who is apt to be domineering, can never get the best assistance from his junior colleague

In regard to appreciating evidence particularly in criminal matters, I found that the civil service judges generally adopted a somewhat mechanical method of deciding whether a witness should be believed or not They kept a count of the contradictions between the statements of different witnesses and, if the number of contradictions was fairly large, they were inclined to disbelieve the witnesses In one sense, contradictions in the evidence of witnesses are very important and must be taken into account, but that alone may not always serve as a satisfactory guide There are contradictions and contradictions, some are minor and some are major, minor contradictions

cannot be given the same importance as major contradictions That is the lesson which a lawyer, who has a large practice at the Bar, learns whereas civil service judges without having much experience of arguing cases sometimes are apt to adopt what I have always regarded as a mechanical approach This is not true of all civil service judges but only of some On the other hand, there were, in my time, civil service judges who developed a kind of hunch in deciding whether a witness was trustworthy or not, and usually their hunch was justified because of their long experience on the Bench before they came to the High Court

In criminal cases, appreciation of evidence is all the more important You read the evidence as a whole given by the witness and then decide whether that evidence is trustworthy or not Inconsistency of a minor character or of a marginal nature should not play any role in determining the credibility of witness I remember one case where I was inclined to believe the story of the prosecution My colleague, who was a civil service judge, very competent otherwise, had made a regular count of the inconsistencies in the evidence of different witnesses and he told me How can you believe these witnesses when there are so many inconsistencies? I tried to persuade him to give up his view, but he appeared to be satisfied that the evidence was untrustworthy I then used one practical argument which proved effective Look here, Brother," I said, "if you and I witness a motor accident on the road and give evidence, our evidence will not exactly tally It may be found to be inconsistent in many particulars, because cross-examination is a very tortuous process Besides, the evidence which a witness gives honestly is the result of his power of observation, his power of remembering what he has seen and his ability to convey what he has seen Taking the case of the accident of the

car, on which side of the road the accident took place, how did it take place, who was in the right and who was in the wrong and other incidental questions which are involved in giving evidence about the accident, may be described by one person, though honestly, in one manner and by another in another manner In details their evidence may differ Therefore, I suggest to you, take the story as a whole, consider the probabilities in the case, motives attributed and proved, the conduct of the parties including that of the witness and decide whether you would like to believe his evidence or not Even after considering the evidence in a general constructive way, if you are not satisfied that the evidence is trustworthy, I will go with you and we may acquit the accused But on the whole, having read the evidence and the impression which the Sessions Judge has formed and recorded in his judgment, the reasons which he has given in support of the order of conviction passed by him appear to me to be satisfactory' He said Give me a little time to consider ' I beseeched him not to feel compelled to accept my view I may be wrong and you may be right Take your time and tell me tomorrow so that I will start dictating my judgment either for acquittal or for conviction That will present no difficulty to me, because I know the arguments for confirming the conviction and I know your arguments for reversing it - One has to make a choice between the two sets of arguments and dictate the judgment Apply your mind to the problem carefully, but do not let a guilty man go unpunished I agree entirely with the fundamental principle of Criminal Law that it is better that ten guilty persons escape rather than one innocent person is punished, but this aphorism must be taken with a little pinch of salt Allowing a guilty person to escape on this broad universal principle is doing injustice to society because if a guilty person is acquitted, he

goes back to his village and becomes a source of threat to the peace of his community"

In this connection, I told him of one real incident A murder appeal had been heard by Bavadekar and Chainani It was a typical case from Satara where a series of murders were committed as a result of ancestral family enmities Unfortunately, the murderers having murdered all the major members in the family, the only witness available was a young boy of about 15 years of age The Sessions Judge observed the demeanour of the boy and, though he did not administer the oath to him, he found that the boy gave evidence in a straightforward manner unhesitatingly and was not shaken by the ruthless cross-examination to which he was subjected He, therefore, believed his evidence and took the view that there were other circumstances which corroborated it But they by themselves were not of such a conclusive character that the conviction of the accused could be based upon them.

When the matter was argued before the High Court, Purshottamdas Tricumdas hammered the point that it would be highly risky and dangerous to convict three persons of murder on the testimony of a solitary immature lad and he pointed out naturally certain circumstances which were in favour of the accused The Government Pleader struggled hard, but did not succeed The result was that the three accused were acquitted

I did not know anything about this case but after about a fortnight of the decision in the case I got a signed letter from the village to which the accused belonged and in that letter the writer bitterly complained that "people talk very nicely about you as a judge, but it was surprising to the entire village as to how you could not see the truth and was persuaded to acquit the three persons As a result of this acquittal order, they were taken out in a

procession and the boy who gave evidence was murdered Who is responsible for the murder of the boy?", the letter writer piteously asked me All I could do was to write a reply in very polite words telling him that what the court had done was in accordance with law and I was not a party to that judgment However I took the precaution to add that in acquitting the accused, the court was bound to follow certain rules which have the force of law in respect of appreciation of a child witness

Dealing with questions of law, one has to follow the precedents, which means earlier reported judgments on the points involved before you However, one should not be completely hide-bound by the precedents, but should consider whether there were any special facts or features in the present case which justified overlooking the earlier decision

The value of precedents, which sometimes seem to bind the subsequent judge, has the great merit of maintaining continuity in the administration of law Unpredictability, which is one of the infirmities of administration of justice in a democratic State, will be accentuated if every judge were to follow his own view and not show due respect for the views expressed by his predecessors In this connection, as indeed in dealing with all points which come before the court. one should always remind oneself of what Justice Learned Hand so passionately urged, that every judge should keep on his table on a paper written in broad letters that the judge who makes no mistakes is yet to be born

Some time in October or so of 1956, Chief Justice S R Das had visited the Bombay High Court and, not unnaturally, rumours were afloat that he proposed to invite one of the Bombay judges to the Supreme Court Though promotion to the Supreme Court was a cherished prize,

which all valued, I could say sincerely that I would not have been disappointed if I had not been called to Delhi For, when I joined the Bench and particularly after I began to take part in the social reform movement, to which I will refer later, I had planned to devote my time to social reform and other cultural activities on my retirement at the age of sixty But that was not to be

One evening, after I returned from court there was a call from Government House Chagla was then acting as Governor I heard the familiar voice of Chagla telling me "Well, Gajendragadkar, what was expected has happened You are invited to New Delhi and Chief Justice Das has written to me that you should go to New Delhi as early as you can ' In his characteristically sweet manner, Chagla added "What will be the gain of the Supreme Court will be our loss" I said in reply "Chief, that is just like you, so long as you are at the helm of the High Court, any one s leaving the court will not make a material difference" No, no," he said, "there are judges and judges I cannot say anything more"

My relations with Chagla were always very cordial We rarely met on social occasions Whereas Chagla was a very prominent figure in the life of Bombay, I was much less so, although I did take part in some educational, social and cultural activities Even so, he was very kind and affectionate to me and treated me with great courtesy and regard

As soon as it was known that I was going to New Delhi, there was naturally excitement particularly on the Appellate Side Bar I wrote to Chief Justice Das that I could not join the Supreme Court immediately There were some cases in which my colleagues had to deliver their judgments, which I had to sign, and there were some part-heard matters which I had to finish I had to

make arrangements for my private affairs as I would be leaving Bombay for more than nine years Chief Justice Das wrote to me politely that he understood my position but urged that I should be in Delhi as soon as I conveniently could

When I took my seat on the Bench on 6 March, 1945, I told the members of the Bar that the time they could pronounce their verdict on my work would be when I retired Since I was leaving the court, it was virtual retirement in one sense and the time had come for them to pronounce their verdict Fortunately, on the last day that I sat on the Bench, both the Advocate-General and the Government Pleader lavishly praised my work On occasions of this kind, there is naturally an element of formal courtesy and one cannot hear any criticism of the judge's work even if the Bar feels that the work of a particular judge deserves to be criticised I was conscious of this element of formality involved in the laudatory reference made to me on the occasion of the farewell address Even so, I got the feeling that at least some of the compliments paid to me were genuine and I was content with them In reply, I made a somewhat elaborate statement setting forth what was my guiding philosophy in discharging my work on the Bench The full text of the speech is reproduced as an appendix at the end

Apart from the compliments paid to me at the formal function in the High Court, the *Bombay Law Reporter* wrote an article on my work which was very appreciative What is more important, the Appellate Side gave me a big party and we spent a large part of the night together when both I and most of my friends were emotionally moved In fact Patwardhan, who was the President of the Association, broke down and could not complete the speech His excitement overwhelmed him When I stood up to

make a reply, I was also moved and I too could not make a suitable reply as I should have

The members of the Original Side Bar arranged a tea party for me in the Radio Club In addition, junior members of both the Original and Appellate Bars hosted a special dinner for me and made speeches in which they all emphasised that they found me very sympathetic to juniors, with the result that they discovered their personalities and their powers when they appeared in my court I was more than happy because as I heard these compliments that benevolent figure of Lallubhai Shah with his kindly eyes stood before me

On 14 January 1957, Shalini and I boarded the Frontier Mail A very large gathering including not only lawyers but many other friends had gathered on the platform to give us a hearty send-off Among them I remember Dr Shirodkar, who was a very close friend of ours and virtually treated Sharad as his disciple and trained her Dr Shirodkar, who was a leading gynaecologist and obstetrician and universally regarded as a genius in the line, was standing near me, put his hand on my back and said to me "Don t worry for Sharad I will take care of her and, I assure you, I will give her all the training so that after I depart she will carry on my tradition and her patients will remember me" Dr Shirodkar kept his promise, and by God's grace, Sharad also justified his hopes in her Sharad has now reached a position of almost top eminence in the line in which Dr Shirodkar shone as a brilliant star Fortunately, in her demeanour to her patients and in the ease and grace with which she performs the operations, she resembles her *guru*

Chapter 10

SOME IMPORTANT JUDGMENTS

Before I conclude this part of the story of my life, I propose to refer briefly to some of my judgments which I happen to recall and which I think may help to illustrate my approach to the different problems posed by them The first of these judgments, to which I will refer, was Madhav Rao Raghavendra Purandare *versus* Raghavendra Rao (48 Bom L R 196) In this case, the appellant had brought a suit against the respondent challenging the validity of his marriage and the legitimacy of the progeny born of that marriage The ground on which the challenge was based was that the defendant and his wife belonged to the same *gotra* The defence was that under strict Hindu Law, there is nothing to justify the contention that a *sagotra* marriage is invalid and, in the alternative when the parties belonged to a community which recognised a custom by which a girl can be given in adoption to the family of another *gotra* she can be married to a person having the same gotra as that of her parents The rule that an adopted girl must in sucn a case observe the *gotra* of both the natural and the adopted families was not recognised by custom

It was urged that the suit was malicious and intended to make the children of the defendant bastards and get the large estate of their father after his death But that is neither here nor there The trial judge held that under Hindu Law as interpreted by judicial decisions a *sagotra* marriage was invalid But on the alternative ground, he held that the custom pleaded by the defendant was proved and valid since it was ancient, certain and reasonable

Basing his decision on this finding, the trial judge dismissed the suit

That brought the plaintiff to the High Court in appeal Kania, Acting Chief Justice, and I heard the appeal We confirmed both the findings of the trial judge with the result that the appeal failed and was dismissed Kania delivered the principal judgment, but he turned to me and said "Since you are a Sanskrit scholar, you better deal with the alternative argument elaborately' I did so Both of us having confirmed the findings of the trial judge as to custom, it was really not necessary to decide the other issue about the true effect of the relevant text and provision of Hindu Law relating to the subject But I had always held that the view that the *sagotra* marriage is invalid under strict rule of Hindu Law was not sound Hindu Law did not involve any such proposition and I thought the present case afforded a good opportunity for me to develop my thesis elaborately I first considered what a *gotra* and *pravara* signified and, in that connection I referred to all the authorities and the authors including Kane himself who argued for the appellant, but mainly I relied upon the thesis of Mr Karandikar, who had critically and elaborately examined the question at length In substance *gotra* and *pravara* were such nebulous and vague concepts that it seemed to me unreasonable to make them the test of the validity of Hindu marriage Kane himself in his great work, *The History of Hindu Dharma Shastra,* has observed that *gotra* is the latest ancestor of one of the latest ancestors of a person by whose name the family has been known for generations while *pravara* is constituted by the sage or sages who lived in the remotest past, who were mostly illustrative and who are generally the ancestral or *gotra* sages, or in some cases the remotest ancestor alone (p 497, *Hindu Dharma Shastra*) Kane points out that at present the number of *gotras* is literally

legion, while the majority of these *gotras* have three *pravara* sages, a few have one, two or five According to the commentators the *kshatriyas* and *vaishyas* have no *gotra* or *pravara* of their own, and they have, for the purpose of marriage, to adopt the *gotra* and *pravara* of their *purohit* Kane justly quarrelled with this doctrine of *nibandha* writers and says "It is carrying the doctrine of *atidesa* (extension) too far with a vengeance" It is not my purpose to reproduce *in extenso* all the texts which I considered in that decision but to indicate broadly what my approach was Having found on the authority of learned authors and having based my conclusion on my own study of the Sanskrit texts, I had no difficulty in holding that the importance attached to *gotra* or *pravara* was simply meaningless

Then as to the text itself, which is supposed to make a *sagotra* marriage invalid, it would be enough to say that in the verses both in Manu and Yajnavalkya, different qualifications are prescribed for the eligibility of the bride, as for instance, she should be younger than the groom, should have long hair, should have brothers, and so on—all these are mere adjectives and are no more than recommendations, and on this every one of the commentators including Vijnaneshwara is agreed But when it comes to *pravara* and *gotra*, the texts prescribe that the *gotra* and *pravara* must not be the same, that becomes a mandatory provision according to the commentators including Vijnaneshwara

Vijnaneshwara was a great jurist of his time and in many views, which he expressed by way of explaining the ancient *smrti* texts, he showed breadth of vision, imagination and foresight as well as a sociologist's progressive point of view But on this one issue Vijnaneshwara succumbed unfortunately to the feelings and prejudices of his time

In regard to Vijnaneshwara s progressive outlook on social problems, I may just indicate that in dealing with questions of स्त्रीधन *streedhana*, which has given rise to so much controversy in Hindu Law, Vijnaneshwara took a very liberal view The text on which the whole controversy rests is the following verse

पितमातृपतिभ्रातृ दत्तमध्यग्न्युपागतम् ।
अधिवेदानिकाद्यच स्त्रीधन परिकीर्तितम् ॥

Now it will be noticed that in this text there is one word आद्य (*ādya*) Taking advantage of that word, Vijnaneshwara commented that the word स्त्रीधन (*streedhana*) must be interpreted not in a technical sense and to limit it to the categories mentioned in the text but in a general sense so as to include every kind of property acquired by a woman

आद्यशब्देन स्वीयक्रयसविभाग परिग्रहाधिगम
प्राप्तमेतद् स्त्रीधनमस्माभि उक्तम् ।
शब्दश्च यौगिको न पारिभाषिक ।

It will be noticed that the great jurist commentator by his ingenious interpretation on the basis of the word आद्य (*ādya*) which means 'and others took the very liberal view and held that the word आद्य (*ādya*) was intended to indicate that the word स्त्रीधन (*streedhana*) had to be literally construed and not in any limited technical sense, that is to say, property belonging to a woman whatever its source may be In other words, this interpretation conferred on Hindu women rights of property almost equal to those of men, a position which was not prevalent even under the English Law until 1925

Of course, the Privy Council, which was then the highest Court of Appeal, just brushed aside the explanation introduced by Vijnaneshwara and made the word स्त्रीधन (*streedhana*) technical in its import This gave rise

to a large number of disputes and controversies with which I am not concerned at this place But the point is, even this great jurist succumbed to the contemporary prejudices and beliefs and treated सगोत्र (*sagotra*) and सप्रवर (*sapravara*) as mandatory relying upon the obsolete and unreasonable rule of interpretation, ignoring the fact that a host of other adjectives of the bride were nothing more than recommendatory It was plain that all the other adjectives of the eligible bride were recommendatory and Vijnaneshwara with his perceptive intelligence should have easily appreciated it, but the ignorant contemporaneous beliefs were too powerful even for that great man

As I have already said, I examined the whole textual position covering the entire ground and came to the conclusion that the requirement that a valid marriage must not be between a bride and a groom having the same *pravara* and *gotra* was to be treated as a merely recommendatory provision like other adjectives in the same sense, which means it was recommendatory and not mandatory That, to my mind, was the plain, unambiguous position of the primary Hindu text (*Yājnavalkya Smrti*)

As is well known, the special feature of Hindu Law has been that, from time to time, commentators by, ingenious use of the *Mīmāmsā* rules of interpretation, brought the letter of the law into conformity with the changing customs and usages, and usage or custom constitutes the recognised source of Hindu Law according to the *Smrtis* If, during the course of its career of several hundred years, Hindu Law has maintained its vitality, it is because the commentators have seen to it that between the letter of the law and the changed usage or custom of the community there did not arise any disparity or discrepancy, and that was achieved by the ingenuity of interpretation In Purandare's case, I made an earnest and strong observa-

tion that the age of commentators having gone, the age of legislation has set in, and what the commentators would certainly have done in regard to this anomalous requirement of *gotra* and *pravara*, the legislators must accomplish

As a result of the categorical direction given by the Privy Council that courts in India in administering Hindu Law must not try to inquire what the original text means but must regard themselves as bound by the commentary prevailing in their area, we were helpless and were bound to hold, following the Privy Council view, that the marriage was invalid because the husband and wife belonged to the same *gotra* *Mitakshara* prevails in Maharashtra and courts in Maharashtra were bound by *Mitakshara* As Mayne has very eloquently and perceptively pointed out in the Preface to his classical book on Hindu Law, the result of this direction of the Privy Council has been that Hindu Law is administered from the grave and does not receive sustenance or guidance from the contemporaneous, prevailing living customs and usages

As chance would have it, within a short time after this judgment was pronounced and I made an earnest appeal to the legislatures Rajaji who was then the Union Home Minister brought a bill validating *sagotra* and *sapravara* marriages Some friends from Delhi wrote to me to say that in his speech Rajaji had in fact made a very generous reference to my judgment while introducing the bill As a person who had recently become a judge, this report naturally gave me very great satisfaction

There is a curious epilogue to this incident As Chief Justice of India, I happened to go to Madras in 1965 and, during that visit, I called on Rajaji He gave me a couple of hours during which he talked to me on several subjects I was impressed by the remarkable memory of the old gentleman and his incisive, penetrating and perceptive

mind To my most agreeable surprise, Rajaji said "Judge, are you the one who had delivered the judgment on the *sagotra* marriage in Bombay? It was a very good judgment" I said Rajaji, I feel rather proud that you should say so and I marvel at your memory After all, the occasion to refer to that judgment was an insignificant incident in your life which is otherwise crowded with so many glorious events that I stand amazed that you should remember the humble author of that judgment and give him a compliment so many years after that judgment was delivered"

As my talk with Rajaji was coming to a close, Rajaji referred to my tour of the South where I had been making speeches before the Bar and even on public platforms My speeches on Hindu Law, Hindu Culture and Hindu Civilization, their history, their growth and special features, appeared to him to be quite sensible and sound He also complimented me by saying that the press reports showed that I spoke well and that I could spontaneously quote several Sanskrit texts in support of my points

Rajaji also referred to the fact that my speeches on constitutional problems appeared to him to be very like Nehru's philosophy and he uttered a word of caution that that philosophy, though *prima facie* attractive, was bound to lead to statism, tyranny and corruption 'Are you by any chance interested in a political career after you retire?', he asked me in a sly tone, and I said 'Rajaji, I am not interested at all in any political career I am very much interested in social and educational reform and I propose to devote myself to these two aspects of our national life, if I may"

Then I pointed out to him that it was a great pity that after freedom was won, voluntary agencies working for social reform had almost disappeared and everybody

seemed to rely on the Government to achieve social reform I added that law might help social reform, but without awakened public conscience, social reform would be difficult to achieve He said 'You are perfectly right' Then as to statism of which he spoke, I told him "Though I admire Nehru and do not wish to disguise from you my admiration for his political philosophy and his personality, what I was speaking about was purely Constitutional Law As I read the Constitution—and I may be wrong—it seems to me to contemplate a sort of synthesis between its Preamble and Directive Principles on the one hand, and Fundamental Rights on the other Even Fundamental Rights described by Article 19 are governed by six provisos which control the Fundamental Rights described by Article 19 (1) Of course I have not come to meet you to argue with you I have to have your *darsan* and the benefit of listening to you and the two hours I have spent with you have really been educative' I then requested him respectfully to take care of his health, because his words and writings "are valued as the words and writings of the wisest man in the country today' With these words I parted from him

The second case, to which I wish to refer, is State *versus* Narsu Appa Mali (53 Bom L R 779) This case raised the question about the constitutional validity of the Hindu Bigamous Marriages Act (Bom XV of 1946) This Bombay Act was passed to prohibit bigamous marriages and contravention of the provisions of the Act was made punishable The validity of this Act was challenged on several grounds I sat with Chagla in hearing this matter Chagla delivered the main judgment and upheld the validity of the Act Usually I do not believe in writing concurring judgments but, in some cases where I thought that I had a somewhat different point of view to present, I did write a separate but concurring judgment I adopted

this course in the present case because, though we agreed on our conclusion, my approach was slightly different from that of Chagla

The first point which fell to be considered in this case, according to my judgment, was whether the personal laws applicable to Hindus and Mohammedans are laws in force within the meaning of Article 13 (1) of the Constitution Article 13 (1) provides that all laws in force in the territory of India immediately before the commencement of the Constitution in so far as they are inconsistent with Part III shall, to the extent of such inconsistency, be void The expression laws in force' is defined by Article 13 (3) (b) Laws in force include laws passed or made by a legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any part thereof may not be then in operation either in all or any particular area I took the view that personal laws do not derive their validity from the fact that they have been passed or made by any legislature or other competent authority in any territory of India

The fundamental sources of both the Hindu and the Mohammedan Law are the respective scriptural texts Then I examined these sources and came to the conclusion that in regard to the nature of the sources on which the Hindu and the Mohammedan Law were founded, they fell outside Article 13 (3) (b)

Then I referred to Article 44 of the Constitution which says that the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India Unfortunately this laudable and very essential provision of the Directive Principles has yet not been translated into law That is the tragedy of Indian democracy In dealing with the point, which was relevant in

he matter before us, I pointed out that the very provision of Article 44 supports the conclusion that the personal aws are not included in the "laws in force in Article 13 (1) I then added that the legislative history with egard to the personal laws also leads to the same inerence Then I examined the legislative history

Another point, which was urged before us, was that, even as a social reform which the impugned Act wanted to ntroduce (and very wisely) should have made it all-pervasive, and should not have left the Mohammedans outside ts ambit I observed that this argument is partly political and partly legal Whether it was expedient to make this aw applicable to the Mohammedans as well as the Hindus, would be a matter for the legislature to consider It is now well settled that the equality before the law, which is guaranteed by Article 14, is not offended by the impugned Act if the classification, which the Act makes, is based on easonable and rational considerations It is not obligatory for the State legislature always and in every case to provide for social welfare and reform by one step So long as the State legislature is taking gradual steps for social welfare and reform and does not introduce distinction or classification which is unreasonable or irrational or oppressive, it cannot be said that equality before the law is offended It is broadly on these grounds that I upheld the law

A footnote may be added to this decision of the Bombay High Court Justice Holmes always said that aw is not a brooding omnipotence in the sky but a flexible instrument of social change, and he advised judges that, in interpreting laws and considering their validity, they should not be oblivious to the felt necessities of the times We did not expressly refer to these two aspects n our judgments, but it is patent that they operated in the minds of both Chagla and myself The reform of

monogamy by the legislature was justified on the view that "this one step is enough for me today"

When I refer to the two varying dicta of the great Judge Holmes, I am not suggesting that, in considering the constitutional validity of the law, the judge should import his personal philosophy in the matter of interpretation or decision But surely the constitutional issues are generally so intimately connected with the general life and progress of the community that the principles, that the wise Holmes laid down, cannot be said to amount to trespass on the valid and valuable doctrine of judicial impartiality and objectivity This may sound somewhat subtle in matters of jurisprudential importance, but subtle considerations cannot be ruled out or treated as irrelevant The trained mind of a judge knows or ought to know the limitations within which considerations of the type mentioned by Holmes should be allowed a play in the decision of cases

Later, a question arose before the Bombay High Court[1] whether this Act, which we had upheld and which still continues to be the law in the State of Maharashtra, could punish bigamous marriages which have taken place outside the territorial limits of the State Certain sections of the Act seem to provide for punishment of such marriages even if they take place outside the territorial limits of Maharashtra, and when the point was raised before the Full Bench of the court of appeal, the Bench naturally held that, in so far as the applicability of the Act to marriages which take place outside the limits of its territorial jurisprudence, the provisions in question are obviously constitutionally invalid As I have just pointed out, this decision does not affect the law within the territorial limits of the State

1 State *versus* Narayandas Mangilal Dayame (59 Bom L.R.P 901)

In Re K L Gauba[3], the Bombay High Court had to deal with the question of its disciplinary jurisdiction Where an advocate agreed with his client to accept his fees, as professional remuneration, a specified share in the subject-matter of the litigation upon the successful issue of the litigation, it was held that the conduct of the advocate in entering into such an agreement amounted to professional misconduct

This question raised several points, but I would like to refer to only one of them The agreement between the lawyer and his client, I observed, is directly concerned with the administration of justice It is an agreement between a lawyer, who is an officer of the court and given privilege of audience by the court, and his client, who is a suitor in court and has a case to be tried by the court

If such an agreement tends either directly or indirectly to affect the administration of justice or sully its course, it would always be declared to be invalid In dealing with such agreements we are not relying on any technical rules of maintenance and champerty, but we are, on the other hand, relying on considerations which are general in character and which are of paramount importance for the purity of the administration of justice In this connection, it must be remembered that, when he enters into an agreement with his client, the lawyer is not acting merely as a citizen but is acting as an officer of the court An agreement by a citizen to help a litigant in his case even by supplying him with funds would not be regarded as invalid under the Indian law unless it otherwise appears to be extortionate, unreasonable or based on improper motives It would not be possible for a lawyer to claim that he should be given the same liberty to finance the litigation of his client

3 (56 Bom L R P 838)

In course of time many changes may take place in our country in the administration of justice The prescribed professional dress for the Bar may change The language of the court may and should change in due course, and in due course the artificial division of lawyers into different classes and categories and considerations of professional etiquette based solely on these artificial divisions should and must disappear and the dream of one homogeneous common Bar for the whole of the country should and must be realised at an early date But these are matters which do not affect the fundamental requirements of professional ethics

It is necessary to emphasise that the primary and the fundamental notions of professional ethics must always remain unimpaired The standard of professional honesty and integrity and of rules of professional conduct that are relevant in that behalf must never be relaxed or scaled down In the observance of these primary rules lies the strength and importance of the status of the Bar

Chapter 11

IN DELHI — COURT, MEN AND MATTERS

When late on the evening of 15 January, 1956, the Frontier Mail reached New Delhi station, I said to myself "I am now getting down here and will be in New Delhi for nine years and more" I had visited Delhi only once before as a tourist when I had gone to see Agra and visited Kashmir I had not taken a *sanad* for the Federal Court and had never appeared in that court In fact, I had not seen the Supreme Court before I joined the court My brother-in-law, Datar, who held a high position in the Union Government, and B N Lokur, my old friend who was then in the Union Law Ministry were at the station Lokur had been a subordinate judge in Bombay, then migrated to the Union Law Ministry and, by dint of merit rose to be the Secretary of the ministry, then became a Judge of the Allahabad High Court and after retirement practised in the Supreme Court

When a person joins the High Court, the Chief Justice administers the oath to him in his chamber and no formal ceremony is organised In the Supreme Court oath-taking is a ceremonial affair The whole court and most of the lawyers assemble in the first court The Chief Justice calls the new judge by his side and administers the oath to him I took the oath in this ceremonial manner on 17 January, 1956

The atmosphere in the Supreme Court is very different from that in the High Court Except for service judges, the lawyer judges in a High Court know each other even before they are elevated and there is naturally a family

feeling and the sharing of a common tradition In the early years of the Supreme Court, when Kania presided over the court, reports were current that the atmosphere was none too friendly All the judges were no doubt intellectual giants but, since the court had just begun its career, there was no tradition as such Mahajan, who was a brilliant and quick judge, did not reportedly pull on very well with Kania The result was that, in the conduct of the court *vis-a-vis* the members of the Bar particularly, the questions put to them in respect of their cases left much to be desired Each judge wanted to write a judgment of his own, though in some cases they all concurred with their final conclusions A judgment of dissent can well be understood, but judgments of concurrence, particularly when they happen to be long and contain reasons which cannot always be reconciled with each other, present a problem to the subordinate courts, particularly the High Courts which have to interpret them It was a sort of solar system, each planet turning on itself This tendency to write long, elaborate, repetitive, concurrent judgments continued for quite some time until S R Das with his tact and ability to carry his colleagues with him tried to control that tendency and gradually concurrent judgments ceased to be normal When I became the Chief Justice, concurrent but separate judgments had become very rare

There are two views on this point As I have already observed, the Privy Council wrote only one judgment M R Jayakar, who was a member of the Privy Council, once told me that on a matter of Hindu Law, where he did not agree with the majority, after discussion the majority view was accepted and it was Jayakar who was asked to draft the judgment This is the Privy Council tradition But then the Privy Council did not pass a decree It merely tendered advice to the Crown In the House

of Lords, and in the Supreme Court of the United States separate judgments are common These courts did not follow the convention that the court should speak through one judgment and only dissent is expressed separately

When we had a Federal Court followed by the Supreme Court, we were building up a new tradition in India and High Courts were somewhat puzzled when passages were cited before them, one irreconcilable with the other both supporting the same conclusion What reasoning they were to follow was a question which baffled most of us That is why on purely practical grounds the High Court judges generally prefer that the Supreme Court should speak through one judgment, leaving the dissenting judge to write his dissent separately This is by the way and also by way of repetition, because what I felt as a High Court judge I continue to feel even today

In the time of S R Das, the atmosphere in the court was very friendly Before going to our respective courts we used to meet daily in the Chief's chamber for some light talk on all subjects, politics not excluded One remarkable feature which I found when I joined the Supreme Court in 1957 was that in regard to admissions, particularly admission of special leave petitions, the convention appeared to be that, even if one judge thought that the matter should be granted special leave, it was granted I did not understand the logic of this convention If at the final hearing the decision goes according to the majority view, why not make the decision of admission on the same principle? I put this question to S R Das, but he said "Never mind, that is the convention, let us follow it" I was the only one who raised this point When Subba Rao came, he strongly supported my view and gradually arithmetic came into operation at the stage of admission as much as at the stage of final hearing

My first experience about admissions was very disconcerting The Chief Justice asked me to join his court That is the convention and the new judge sits with the Chief Justice on the Chief Justice s Bench for some time before he is assigned to another court At the time of admission, a junior lawyer struggled to have a special leave in a petition which he had filed He raised three or four points but all the judges who heard him dismissed the petition Poor young man! My heart went out to him in sympathy

After half an hour, Motilal Setalvad walked into the court majestically and argued a special leave petition raising substantially the same points which the junior lawyer had raised and failed half an hour earlier As Motilal raised these points, all the judges indicated to him that the points were worth considering and he was granted leave When we rose for the recess, in my impatience, in the presence of all my colleagues, I walked up to the Chief Justice and said Chief, what have we done this morning? We rejected the junior lawyer s special leave petition on points for which we admitted Motilal's What would the junior feel and what would be the feeling of the other members of the Bar?" All the judges were taken by surprise by my rashness but none had any reply to give That evening Venkatarama Iyer walked into my chamber and said "Brother, during the recess you appeared to be very indignant and virtually blamed all your colleagues, including me You were right and I have great admiration for you but still I would advise you not to be so forthright in New Delhi He went on 'I have also found that on public matters you express your views very strongly and categorically Please do not do so I have read your judgments and I like them, particularly your parting speech at the Bombay High Court touched my heart That is why I am venturing to give you this advice "

I said "Brother, I am grateful to you for your advice Believe me, I hold you in very high esteem" Indeed, in my view Venkatarama Iyer was a great judge Well-versed in statutory law, master of case law, sound in the principles and philosophy of law, lucid in the exposition of law, sound in his conclusions, patient to the Bar, his judgments read like literature and with all that he was so humble, so modest, so appreciative of other people's merits He was a trained musician and a great Sanskrit scholar He knew Upanishadic philosophy, Rigveda and the Bhagavad Gita by heart and was capable of speaking on any facet of Hindu philosophy with mastery I have come across few judges like Venkatarama Iyer in my life

In the Supreme Court, when a judge is asked to draft a judgment, the draft is circulated to his colleagues for their approval Sometimes some colleagues do not approve of the draft and intimate the draftsman that they propose to write a dissenting judgment When I prepared my first draft and circulated it, one of my senior colleagues put his pen through page after page on my draft and remarked Delete this,' and so on The draft came to me thus defaced Having presided over the Bench in the Bombay High Court for several years, I had never seen such treatment given by any judge to his colleague I am sure no discourtesy was meant because I knew the judge's temper He was a kind-hearted friendly soul, but that was his way of doing things After I received the draft back from him with the direction that the scored-out portions should be deleted, I wrote back a reply saying 'My dear brother, many thanks for your kind suggestion to delete certain passages, but I am not going to delete a single word from my draft If you don't agree, you may write your own judgment If another colleague does not agree with me and joins you, he may sign your draft, but in any case my draft will go over my signature" As soon as he got

this note, he took the telephone and said Brother, what is this that you have done? I never meant any insult or offence to you You know my temperament, forget all about it I am signing your draft

On the other hand, Sarkar s conduct in this connection was a model of courtesy, politeness and culture When he sent your draft back, if he did not agree with any of your reasoning or any passage, in the margin he would merely say ' Brother, please consider whether this can be put in another form Please decide whether it is necessary to give this reason It seems to me that even without it, our conclusion will be valid However, you decide ' That was Sarkar s way of doing things and it endeared him naturally to every one of his colleagues

When I joined the court, it did not take me long to find that the Delhi Bar was not up to much In fact, Delhi was a district place and there was not even a High Court Bar before the Federal Court was established Consequently, judges found that they were not given adequate assistance by members of the Delhi Bar Since the Federal Court and, following it, the Supreme Court was the highest court of the land, judges were naturally keen on getting the best legal assistance from the Bar That inevitably led to accommodation of lawyers coming from Bombay, Madras and Calcutta But, though the origin of this convention of adjourning cases to accommodate competent lawyers could be understood, it led to the undesirable result that no Supreme Court Bar could be built up So I first began a whisper against these adjournments When Subba Rao joined the court, we both loudly protested against adjournments being granted to lawyers coming from outside Delhi merely for their convenience Our protests did not immediately succeed but gradually the tendency became less perceptible Besides, in due course, retired

High Court judges settled down in New Delhi and they gave able assistance to the court which made it unnecessary for the court to lean almost entirely on lawyers coming from Bombay, Madras and Calcutta to argue their respective cases

Another feature which I did not very much appreciate was that judges used to accept invitations for dinners from lawyers far too frequently I consistently refused to join such dinners When S R Das was due to retire, there were a number of dinners and S K Das found that I was not accepting any one of these invitations He came to me and said ' Brother, accept at least one so that the Chief may not misunderstand you So I did accept one and, when we met to dine in a hotel, I was amazed to see that we were not dining in an exclusive room but in the general hotel itself, which was otherwise crowded by other diners and it was a lawyer who was entertaining us as a host to the large number of visitors present in the hotel With my Bombay background,[1] I did not relish this prospect at all, and not feeling happy about such dinners I conveyed my views to S R Das With his characteristic tact, he said, Yes, I see your point '

The undesirable and perhaps intended motivation for such invitation for dinners became patent in another case That was a dinner arranged ostensibly by a lawyer who was a *benamidar* of the proprietor of a hotel chain So far as I know, I and K C Das Gupta did not attend Most of others did The dinner was held on a Saturday at a hotel On Monday next, before the Bench over which B P Sinha presided and I and K C Das Gupta were his colleagues, we found that there was a matter pending admission between the management of the hotel chain and its workmen

1 The Bombay background has considerably changed Cases of judges being entertained in luxury hotels are not infrequent and have been discussed in the Press, *R A J*

I turned to Sinha and said "Sinha, how can we take this case? The whole lot of supervisors and workmen in the hotel is sitting in front and they know that we have been fed in the hotel ostensibly by the lawyer but in truth at the cost of the hotel, because the very lawyer who invited the judges to the dinner is arguing in the hotel's appeal" Sinha, the great gentleman that he was, immediately saw the point and said 'This case would go before another Bench'

Judges ordinarily must observe certain rules of decorum in their social behaviour A little isolation and aloofness are the price which one has to pay for being a judge, because a judge can never know which case will come before him and who may be concerned in it No hard and fast rule can be laid down in this matter, but some discretion must be exercised

Apropos the admissions of special leave petitions under the convention, that even if one judge were inclined to admit, leave should be granted, the Supreme Court managed to accumulate a large number of special leave petitions for hearing It was not appropriately or adequately realised that though Article 136 was a residual article, it was not intended to cover all kinds of applications for special leave in regard to the proper scope of Article 136, care ought to be taken to bear in mind the relevance of Articles 133 and 134, because whatever cannot be admitted under these articles should not secure admissions under Article 136, unless it is a very unusual case where the court, after careful consideration, is satisfied that gross injustice has been done In actual practice, however, where civil or criminal matters tended to attract the provisions of Articles 133 and 134, the tendency was to take to Article 136 That was not intended to be the object of Article 136 Article 136 was, no doubt,

intended to confer, upon the highest court, wide powers but they were to be exercised sparingly in the interest of justice It was not intended to grant leave to a petitioner to give him a chance to argue that the judgment of the High Court might be erroneous All errors committed by the High Court are not intended to be corrected under Article 136 Otherwise, Articles 133 and 134 may be pointless They put certain limitations on the admissibility of civil and criminal appeals and if every limitation is going to be ignored in dealing with civil and criminal appeals under Article 136, what is the purpose of Articles 133 and 134 This liberal and, no doubt, popular view was taken by the court when the convention was that even when one judge said yes', special leave was granted under that Article In my time, we controlled this tendency I do not know what procedure is now being followed by the court

Apropos these admissions, Subba Rao in his forthright manner once told S R Das that in Madras there was a saying that if a case was weak for special leave, brief N C Chatterjee, and if it was weaker, brief M C Setalvad and special leave would be granted It was no doubt a joke, but I cannot say that Subba Rao was not justified in bringing that current joke to the notice of the judges of the Supreme Court

A lawyer who was very powerful in his days was Jayagopal Sethi With a handsome personality, choice expression in his advocacy, correct etiquette personified, he was a great expert in ballistic matters He was primarily a criminal lawyer His admirers used to boast that there was no appeal which he argued and lost His advocacy in criminal matters was undoubtedly first-class, but sometimes he was apt to overdo Once, when he was making a display of his knowledge of ballistic matters and making subtle points in criticising the evidence of the

ballistic expert to discredit the prosecution case, I said to him 'Mr Sethi, would these metaphysical and subtle distinctions carry your case any farther?' He laughed and thereafter began to address the court not looking at me After fifteen minutes I said to him "Mr Sethi, you may be angry, but remember I am a part of the court and you have to take me with you, so you must answer my question" That brought him round

In the first court where five judges generally sit, there was no direct communication among all of them and the tradition was for each judge to put questions to the lawyer in quick succession When this happened I was often reminded of Walawalkar of the Bombay High Court who was a brave and outspoken lawyer When he was addressing a Division Bench of the Bombay High Court, two judges asked him questions He said 'My Lords, both of you have asked me questions You decide whose question I should answer first" There was laughter in the court and the judges realised that it was not proper that one judge should ask questions even before his colleague's question had been answered

Simultaneous questions were not unusual in the first court with the consequence that sometimes, if one judge asked a question, another judge from the other end would give an answer It happened to me once I made no grievance or complaint of it, but after fifteen minutes, it happened again I turned to counsel and said Mr Counsel, my questions are addressed to you and I want your answer," and I emphasised the word *your* The shaft went home and my questions were never answered by any colleague

It need not be emphasised that in the highest court of the land, principles of decorum and dignity must be scrupulously observed The tendency to show off one's

learning must be controlled by the judge After all, every judge has been taken to the Supreme Court because he is eligible to be elevated to the highest position, so there is no need for any judge to show off by going out of the way that he knows the law It happened once to Viswanatha Shastri While he was arguing a point the judge who liked to show that he knew the law, and the case law particularly, said to him Mr Shastri, haven t you seen the latest case reported in the *Madras Law Journal* ? Shastri said No, my Lord, I am sorry" Next day Shastri came back and said My Lord, yesterday I said that I had not seen the case reported in the *Madras Law Journal* I now find that the case is quoted in a footnote in one of the text-books, but on looking at the case I discovered that it had no bearing at all on the point with which we are concerned I hope your Lordship has seen that judgment and will find no difficulty in accepting my proposition

Talking of Viswanatha Shastri, if I am asked who was a complete lawyer that I have seen in my career at the Bar and on the Bench, I would unhesitatingly say Viswanatha Shastri Not sophisticated, not a master of eloquent English, not even well dressed, Shastri was a master in the philosophy of law and in all branches of law so that he could give an opinion on any point pertaining to any branch of law without looking at the book In some respects Shastri was a queer man He lived in a small tenement with one servant, he had no library, no furniture except a table and two chairs and no car He was travelling by rikshaw And yet he was reported to be earning more than Rs 25,000 a month I understand that he spent much of the money in charity I know of one case where Shastri's charity was transparent He heard that one lawyer practising in the Supreme Court was in financial difficulty and was likely to be arrested Shastri sent him a cheque

for Rs 10,000, with a letter telling the lawyer that the cheque was not as a loan but a friendly assistance to him in his hour of need Human nature is unpredictable Shastri did not believe apparently in conspicuous living Once I had arranged a party to which I had invited all the judges and eminent lawyers Shastri was one of the invitees, but he came rather late When I said, "Shastri, we have been waiting for you ' Without any embarrassment, he replied "Chief Justice, but what could I do? I could not get a rikshaw in time " All of us enjoyed his innocence

One little incident which touched me immensely took place when I was ill and did not go to the court for three days in January 1965 Shastri came to my house, and I later heard from Malhotra that he had given Shastri a lift to my bungalow Malhotra sat inside his car waiting, and Shastri walked in As a result of my illness, which was vicious diarrhoca, I was not able to speak loudly Like a child, Shastri burst into tears and said 'Chief Justice, when you do not come to the court, I feel miserable " It was a genuine expression of affection for me Not satisfied with this, Shastri went home and wrote in his own hand a long letter praising me and telling me how this was the first occasion on which he had gone to any judge s place

Another unique quality of Shastri's personality I discovered when I visited him in hospital He had been involved in a road accident and had been hospitalised His left leg was fractured and he was lying on a cot with his left leg suspended by some contrivance It was a very uncomfortable position When I went near him he was obviously happy and said "Now that we have met in a hospital, shall I talk to you on philosophy? Tell me whether Sankara interprets *Isa Upanishad* properly or it

has been interpreted by him solely with the intention to bring its purport into line with his own philosophy ?' I was amazed at this question A man in pain, lying in hospital in that awkward and uncomfortable position, smiling and talking philosophy to me! He was aware that I knew Sanskrit and particularly the *Upanishads* fairly well That was why he started the subject and we went on talking about it for thirty minutes Then I said "Shastri, I do not wish to tire you, so I will now take leave" He said, No, no The thirty minutes you have been here were the most pleasant time I have spent in this hospital In fact, meeting you and talking to you always gives me genuine pleasure' I thanked him and left the hospital Apart from being a profound lawyer, Shastri was a deep Sanskrit scholar and a critical student of Hindu philosophy Few lawyers can claim the double first-class distinction in this matter

Motilal was undoubtedly a great lawyer and to hear his arguments was a pleasure He was familiar with all branches of law and his presentation was uniformly lucid and brief Even in cases involving labour law, Motilal was just as good as in other cases It became very easy to write the judgment when he argued a case

Daftary represented another type of a lawyer altogether His style of advocacy was colloquial, rather than learned or pedantic He knew how to handle the judges and was persuasiveness personified I do not think Daftary ever set the judge against himself On the other hand, if a judge chose to be rude to him or otherwise spoke slightingly about his arguments, Daftary knew how to meet the situation effectively without appearing to be rude or impertinent In the Bombay High Court there were several stories about Daftary's humour One of the judges, who, some members of the Bar thought, was not

worthy of elevation, said to Daftary while the volume of the Law Report was handed out to him by the Court master 'Look here, Daftary, there is a bug in this book' Without a moment's thought, Daftary said Yes, my Lord, some bugs are ambitious When a brief was offered to him and he was told that it was on Bavadekar's board Daftary said 'My fees would be Rs 2500 for arguing and an equal amount for hearing the judge's arguments And yet I know for a fact that Daftary held Bavadekar in high esteem

Mr H M Seervai, the then Advocate General of Bombay, frequently appeared before the court in my time Seervai is an outstanding lawyer and jurist *par excellence* His book on constitutional law has received acclaim not only in this country but even abroad in the United Kingdom and in the United States It is a magnificent treatise on constitutional law and can be regarded as Seervai's precious gift to the legal world Seervai's arguments are couched in juristic terms He goes straight from one point to another without any theatricals and easily convinces that the point he is arguing is the right one and his opponent's point is wrong The statement of the case which he drafts is a model of such statements Whenever he takes up a case, he devotes his entire attention to the study of every aspect for the problems involved and does his very best If I were asked who is the real jurist in India today, I would easily mention Seervai I came to know Seervai intimately after I retired I have now learned that he takes a limited number of briefs, gives his clients the very best attention, does not charge them extravagant fees and in fact is not interested in making too much money His pleasure and real happiness lie when he sits in the library and takes up some important legal subject for study on which he writes His writings, like his book on the Constitution, have

received great encomia from jurists of the English-speaking world He loves his books, seeks no publicity and is content to devote whatever leisure he has in the company of his cultured family

Another lawyer who made a remarkable impression on the court is Mr N A Palkhivala Just as Seervai s book on the Constitution of India is a classic, so is Palkhivala s book on the Income-tax Act He is a recognised authority on Tax Law, and his practice is probably the highest in the country Now he has joined the Tatas and does not take up many cases I have not met Palkhivala many times, but whenever I met him, I found that, apart from being a very able and distinguished lawyer and a very persuasive speaker, he is a man of wide culture With his expertise in Tax Law and profound knowledge of Constitutional Law, he combines a deep, intimate and abiding interest in the philosophy of Aurobindo, and indeed in the whole range of Indian Philosophy Such a combination is very rare indeed As a result of his political convictions, which are genuine and honest, Palkhivala s legal advocacy tends sometimes to be political, and points which a jurist like Seervai may not necessarily press into service, would not be left by Palkhivala Palkhivala, his critics would say, sometimes tries to play to the gallery, but it is really not playing to the gallery when he argues a political-*cum*-constitutional matter in which his personal convictions are involved He is inevitably worked up and his words express his views and feelings genuinely and fearlessly

Achruram was another lawyer who made a deep impression on my mind He was a specialist in the law relating to the refugees who had come to India from Punjab He knew that law, which was somewhat obscure, very well He enunciated straight points and made them clear

by lucid exposition He would never twist any point of law to win his case nor would he ever twist his facts Judged by ordinary standards of oratorical performance, his advocacy could not claim to be first-class but on merits he had no equal in the branch of law in which he had specialised His appearances were few, but every time he appeared we were sure that we would get proper assistance

About the tradition of the court in the making of decisions, I would like to refer to one particular case The Working Journalists Act and the Award made under it became the subject-matter of a heated debate before a court of five judges presided over by Justice Bhagawati, on which sat Sinha, Imam, Kapur and myself It was argued by Motilal on the one side and Munshi on the other The challenge was to the validity of both the Award and the Act About the Award, we were agreed that it had to be set aside, for its contents were based on no logic or reason The real fight was about the validity of the Act During the course of the hearing it became fairly clear that Bhagawati was for striking down the main operative section of the Act while I was clearly of the view that the section was valid When for the first two days Bhagawati and some other colleagues put questions in favour of the challenge to the Act, I kept quiet From the third day I began to ask my questions, because I felt that it might become necessary for me to write a separate judgment I was sitting to the left of Imam, who saw the purposiveness with which I was putting my questions, and he turned to me and whispered in my ear, 'You are doing very well, brother I am with you, but then you must write the judgment ' I told him it was already in my mind The fight at the Bar went on for quite some time and the case was adjourned for judgment Bhagawati then suggested to Sinha that they and Kapur should first discuss the matter

and then call a meeting of the whole court for discussion Sinha was a great gentleman and believed in healthy tradition He said, No, if we meet, we meet all together" So we met at Bhagawati's place to discuss the merits of the case

Bhagawati opened the debate and expressed at length his reasons for striking down the main operative section of the Act When he had finished his say, I intervened and said I take an entirely different view In my view the impugned sections are valid ' I gave my reasons After I had finished, Bhagawati turned to the other colleagues Imam at once said 'I agree with Gajendragadkar ' Sinha and Kapur were apparently originally inclined to agree with Bhagawati Now Sinha said "I see much force in what brother Gajendragadkar has said and I would like to consider the matter again and as at present advised I would go with him So, one becomes three, and Kapur decided to throw in his lot with us, that made us four Bhagawati then followed saying If all the four of you take that view, I will not differ, but I will write the judgment' I said to Bhagawati 'That is your choice You are the presiding judge If you want to write the judgment, of course you can and you should ' The result was that the Act was upheld[2] The decision-making process in the court sometimes is linked with the debate which takes place in the chamber of the judges after the arguments are over and before the Bench decides what view to take If at the end of the arguments, differences persist, then dissents follow and the court delivers the majority judgment and the minority judgment

In a large majority of cases, however, as the arguments proceed and questions are put by different judges, the presiding judge whispers in the ears of his colleagues

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2 Express Newspapers Ltd vs Union of India—AIR 1958 S C 578

about the views that their questions tend to show, and tries to find out whether the differences disclosed by the questions could be settled By the time the arguments are over, it would then be clear if there is unanimity, in which case the presiding judge names the judge who should write the judgment and if there is dissent, the dissenting judge naturally writes his dissenting judgment, and the presiding judge names the judge who should write the majority judgment This procedure is followed in the majority of cases

After this judgment was pronounced, when my attention was drawn to the judgment of the Supreme Court in regard to the Bohra Chief s powers of excommunication of any of his followers, I said to Sinha If only I had been on that Bench, I would have joined you and two of us could have easily got a third one and, by majority, we would have upheld the sound, progressive, well-reasoned judgment delivered by Chagla in the Bombay High Court The judgment of the Bombay High Court, which was acclaimed as a progressive judgment when it was delivered, unfortunately received a knock-out blow when the Supreme Court set it aside Originally the idea was that I should be on that Bench That is what Sinha had told me, but owing to the exigencies of work I was asked to sit on another Bench and the Bench that heard the appeal could not appreciate Chagla s judgment and held that the Bohra Chief's power of excommunicating his followers was not unconstitutional Sinha alone differed It will thus be seen that, in the matter of decisions, sometimes there is an element of chance and it depends on which judges hear a particular matter The view that Chagla took was progressive and consistent with the dictum of Holmes that law should be so interpreted by courts that they should take into account the felt necessities of the times Is it necessary to make any argument that the felt

necessities of the times, and indeed the very spirit of the Indian constitution, want that this obsolete, arbitrary power of excommunication vested in a religious head should be struck down as it was struck down by Chief Justice Chagla consistent with the broad, progressive view of the function of law ?

During my tenure, in the Supreme Court, bigger bilingual Bombay was divided into Maharashtra and Gujarat, and the Gujarat High Court was established Newspapers reported that the first Chief Minister-designate of Gujarat was Dr Jivraj Mehta and the first Chief Justice-designate was Justice K T Desai of the Bombay High Court In fact, Desai's photograph appeared in the newspapers and H K Chainani, Chief Justice of the Bombay High Court, and Desai began discussions about the division of the assets of the High Court

When I read this news, I thought that S T Desai who was senior to K T Desai probably did not want to go to Gujarat S T was senior to K T, and it could not be said that he was in any manner inferior to K T as a judge He had a large practice at the Bar and he made a good judge But from a friend I learnt that S T felt rather offended by what threatened to be supersession ' So, as soon as I heard this, I went up to Morarji Desai I said, "Morarjibhai, is the Gujarat of Mahatmaji going to start its career with a gross injustice to the judiciary?' He said "What do you mean?" I said ' From the reports of newspapers, it appears that S T's claims to be the first Chief Justice, which are legitimate, are being ignored and K T is being appointed in his place K T is junior and S T must be the first Chief Justice It is the settled convention that the appointment of Chief Justices goes by seniority, and the appointment of the first Chief Justice should not be against this well established tradition"

"What can I do?, he said, "the news has been announced and the two Chief Justices, I understand, are already negotiating about the division of assets" I said "Morarjibhai, I have confidence in your firmness and, I am sure, if you are satisfied that my point is right and fair, you will see to it that the injustice which is sought to be done is not allowed to be committed Then he said "Well, you have tried to flatter me in one way" I said, 'Morarjibhai, I never do that I have spoken the truth I have often criticised you, but I cannot dispute the fact that you do believe in doing what you think to be just and fair Separation of the Executive and the Judiciary, which you brought about in the Bombay High Court notwithstanding the opposition, if not the lukewarm attitude of Sardar Vallabhbhai Patel, who was then the Union Home Minister, will bear out what I said "All right," he said, "I will see what can be done" In two or three days, the news appeared that instead of K T Desai, S T Desai would be appointed as the first Chief Justice of the Gujarat High Court

S T Desai was a very good lawyer following the illustrious tradition of his father who was a lawyer on the Appellate Side, he had revised several books written by his father, commenting on different Provincial Acts, and his great work on Hindu Law, speaks for his industry, for his knowledge of Sanskrit and Hindu Law in the original texts and his capacity to marshal different topics in an original, systematic and elegant style Hindu Law has now been modified and that great book has virtually lost its practical importance, and yet persons really interested in knowing the true Hindu Law turn to this book and read it with pleasure and benefit to themselves The book speaks for the scholarship and the great industry of the author In pressing S T's appointment as the first Chief Justice of the Gujarat High Court, I was relying not only on the well recognised tradition in the matter but also on his merits

That is not to say that K T was not competent He had himself a very large practice, was a very good lawyer and made a very good judge But the point was on a matter of principle and when Morarjibhai was satisfied that I was right on principle, he saw to it that what appeared to have been done was undone That is how, by pure coincidence, I played some part in the appointment of the first Chief Justice of the Gujarat High Court[3]

While I was in the Supreme Court and a few months before I became Chief Justice in 1964, the Advocates' Association of Western India celebrated its Centenary and I was invited as chief guest In welcoming me, Mr Adik, who was the President of the Association, said

> 'Justice Gajendragadkar was the most eminent and leading member of the Bombay Bar and acquired great reputation for his forensic skill and ability and legal acumen He was the uncrowned leader of the Appellate Bar and was held in very high esteem both by the Bench and the Bar He achieved great distinction first as a judge of the Bombay High Court and thereafter as a judge of the Supreme Court of India In the Supreme Court of India he has been responsible for the development of constitutional law and industrial law His judgments are known for lucidity clarity of thought and expression, learning and deep study of law It is said that Law is a jealous mistress but even this jealous mistress could not confine Justice Gajendragadkar exclusively in the narrow field of law, for he, in the midst of his onerous duties, first as an advocate and thereafter as a judge, spared time and has taken a keen

3 It may be mentioned that K T Desai did not sit as a puisne judge of the Gujarat High Court It was only after S T Desai's retirement that K T Desai joined the Gujarat High Court In the meantime he was Chairman of the National Tribunal for the Banking Industry–R A J

> and active interest in social educational and university matters He is a social worker and social reformer of great repute and of a very high order He holds very progressive and even revolutionary views He is continuing the tradition of great social reformers like Justice Ranade and Gopal Ganesh Agarkar '

There is no doubt that on occasions of this kind, generous sentiments are usually expected to be expressed and they should not be taken literally by the person in respect of whom they are so expressed But my relations with the Appellate Side Bar, which spread over nearly twenty years, were so intimate and almost personal with every member that I thought Mr Adik s observations were not merely formal but were genuine When I was in the Bombay High Court, Mr Adik was just a rising lawyer He was getting plenty of work and he had a number of juniors under him He was a smiling lawyer, put his cases in a simple and straightforward manner without undue decoration or ornamentation and without bothering to cite too many precedents Besides he admired me so genuinely that on the day on which I took my oath as Chief Justice, with a few friends he came all the way to New Delhi and presented to me a beautiful painting of the Bombay High Court It was really a good piece[4] and it was hung in the Chief Justice s Chamber when I was the Chief Justice

After I joined the Supreme Court, I had been talking to all my colleagues, and the Chief Justice in particular, that on the Bench of the Supreme Court there should be one judge who was recruited directly from the Bar The idea did not catch first, but later S R Das saw that it would be a good plan to get a lawyer as a judge of the

4 Done by Mr J N Vernekar who is now an assistant registrar in Bombay High Court –*R A J*

court and Sinha readily agreed Attempts were thereafter made to persuade Seervai, Palkhivala and Lal Narayan from Patna, but all of them refused I did not however despair In course of time I found that S M Sikkri, the Advocate-General of Punjab, who often appeared in the first court as well as other courts, would be a good choice With a good personality, unassuming and modest, accurate in the presentation of his facts, quite familiar with the doctrines and decisions of American courts as well as the decisions of the House of Lords and the English courts, Sikkri was a master of facts and formulated his points briefly and precisely In due course, I mentioned his name to B P Sinha who was about to retire as Chief Justice and he agreed He told me You better try to contact him and invite him to my place' Three or four days thereafter I was on the look-out, but Sikkri was not to be seen in the courts One day, as we were about to rise in the first court, I saw Sikkri just peeping in I immediately sent word to the Bar room and requested him to see me He did not know what it was all about I said Sikkri, would you be good enough to meet Sinha and me in the Chief Justice's bungalow?" 'But may I know why?,' he asked me and I said 'It is not for me to tell you, it is for the Chief Justice to tell you why he wants to see you" Later in the evening, when Sinha and I were having tea Sikkri arrived not knowing why he had been called He was very modest and would not sit on the same sofa with us I said "Sikkri, come and sit near the Chief Justice and take a cup of tea with us" Then Sinha turned to him and said 'Sikkri, I want you to join us on the Bench He was absolutely taken by surprise He said 'No, Chief Justice, I won't be able to do the work of a judge in the Supreme Court satisfactorily I may perhaps be a good advocate, but I do not think I have the making of a good judge' Sinha said "Leave that to me

and my colleague Gajendragadkar We have decided to recommend your name We won t take a 'no' from you" When Sinha put his request with such emphasis, Sikkri said 'All right, but please remember you are taking a risk" Sinha said 'The risk is mine, not yours' In due course, S M Sikkri became a judge of the Supreme Court and retired as Chief Justice of India When Sikkri and his charming and cultured wife came to see me, I told her 'Assure your husband that he will make a very good judge, and she was naturally very delighted

With Sinha s authority and permission, I played some part in the appointment of two judges of the Bombay High Court When Sinha, as Chief Justice, visited Bombay, he made a speech in which he stated that his view was, and it was shared by his colleagues, that no one from the Bar should be appointed judge if he is below 45 and above 55 years in age Chainani was then the Chief Justice of Bombay and he took Sinha s statement as categorical and binding Soon after, Sinha broke both the rules He appointed a judge below 40 and another one who was above 55, and yet Chainani would not recommend the name of Mr Y V Chandrachud who was the most outstanding lawyer on the Appellate Side in Bombay He had made a distinct mark in Nanavati's case and when it was proposed to Chainani that his name should be sent for appointment as a judge to the Chief Justice, Chainani agreed that Chandrachud deserved to be appointed, but his age was his handicap I came to know about this view of Chainani from one of the judges of the High Court I then walked up to Sinha and said "Chief, the statement that you made in Bombay is being treated by Chainani as a matter of law and that is the only reason why he is not sending Chandrachud's name He said "If that is so, when you meet Chainani next, tell him in my name that he ought to send Chandrachud's name without

delay," because he himself knew that Chandrachud was the best lawyer on the Appellate Side at that time

When I went to Bombay during the summer vacation, I met Chainani and I conveyed the message to him on behalf of the Chief Justice of India, and I said 'If you hesitate even now, Sinha may formally write to you and ask you to send Chandrachud's name That is how Chainani sent Chandrachud's name and he became a judge of the Bombay High Court when he was 41 years old Today he is the Chief Justice of India[5]

Another person whose name Chainani was reluctant to send was District Judge Shikhare He had risen from the ranks of a civil judge but he wrote very good judgments and had a firm grasp of law and had made a mark as a district judge wherever he went His last assignment as district judge was at Nagpur where he tried a very important dacoity case with great expedition and gave complete satisfaction to the members of the Bar I had gone to Nagpur to preside over a libraries' conference when I heard about this achievement of Shikhare I knew Shikhare very well He kept indifferent health, that was his drawback But naturally, knowing as I did that he was one of the distinguished district judges of the State he looked forward to be elevated to the High Court Bench When he came to see me at Nagpur, he said Gajendragadkar, I am not likely to be a judge of the High Court, that does not seem to be in my horoscope" I said "Shikhare, I do not believe in horoscopes, but I believe in your distinguished academic record and your outstanding record as a district judge Your latest achievement in the dacoity case is a fitting tribute to your ability to deal

5 By coincidence Chandrachud's appointment came to be known when he was in Delhi on Gajendragadkar's 61st birthday i e 16th March, 1961 —*R A J*

with complex cases with remarkable expedition I assure you, you will be a High Court judge sooner rather than later '

When I returned to New Delhi from Nagpur I talked to Sinha about Shikhare He also had heard from his Nagpur friends — because Sinha was the Chief Justice of the Nagpur High Court before he was elevated to the Supreme Court Bench — and he said 'When you meet Chainani, convey to him the message in regard to Shikhare as you did about Chandrachud ' I did the needful and Shikhare became a judge of the Nagpur High Court Unfortunately, death snatched him away not long after By his premature death the High Court lost a very distinguished and able judge

There is one small incident which I would like to mention After I went to New Delhi, Bhise from Birlas and his wife Suhas came to see us and we became great friends Bhise persuaded me to be the President of the Maharashtra Mandal and Suhas persuaded Shalini to be the President of the Maharashtra Bhagini Samaj They both continued to be our intimate friends throughout our stay in Delhi and were helpful to us in many ways In my time, the Maharashtra Mandal was active Every year on the annual day, which we spent in the open from morning till evening, plays were performed in the winter season, meetings were held, and we had a small library The Bhagini Samaj had its own activities I understand that the Samaj now owns a building mainly as a result of the persistent efforts of Mrs Bhise and her friends

In this connection, I ought in fairness refer to two of my friends Kittur and Harbans Lal Harbans Lal looked after me as though I was a member of his family Every week at a certain time he would drop in, check up my condition, suggest any medicine if necessary and then go to the hospital I will always remember both these friends who treated me with such affection and regard

Once when Prof Vasant Bapat of Bombay visited Delhi with his troupe of cultured young boys and girls to show what they called *Maharashtra Darshan*, Bapat desired that some important person should be invited to be the chief guest Our choice fell on Govind Ballabh Pant I had heard that Pantji held a big darbar consisting of two apartments One apartment accommodated VIP visitors and the other less important people The time given to you was never kept I asked my secretary to ring up Pant s secretary and fix up an appointment He mentioned 7 p m on the following Saturday Then I asked my secretary to ring up Pant's secretary again and enquire whether his 7 p m meant 6 60 p m or later, and he put the question to Pantji in the same crude form Pantji told him to answer the quest.on in the affirmative emphatically

On Saturday I entered Pantji's bungalow 5 minutes to 7 p m I saw the two apartments fully occupied and his secretary did not come out to receive me I wondered whether I should return, but just then Pant's secretary rushed out and took me into his chamber Pant looked at his watch and smilingly said "Gajendragadkarji, it is exactly 7 00 p m ' I remember very well that Swaran Singh was sitting in his chamber at that time and yet Pantji took me in to keep his promise I mentioned to him the purpose of my visit and he readily agreed Ultimately Prof Bapat organised the *Maharashtra Darshan* very well and it attracted a large audience

Chapter 12

CHIEF JUSTICE OF INDIA

A couple of years before Chief Justice Sinha retired, grave misfortune overtook brother Imam Imam was a gentleman to the core, a very sound criminal lawyer, good even in civil law and in constitutional matters, always willing to consider the pros and cons of every issue after hearing the lawyers patiently and sympathetically By his demeanour and genial temperament, Imam had become very popular He belonged to the illustrious family of Ali Imam and Hassan Imam of Patna In the ordinary course after the retirement of Chief Justice Sinha, he would have become the Chief Justice by virtue of his seniority Unfortunately illness overtook him and that tragically, to the distress of all of us, affected his mind He attended the court, but Subba Rao, whom Sinha had asked to join him on the Bench, always complained that, though he had very great regard for Imam as a gentleman, he found it very difficult to carry on with him as a colleague because, unfortunately, he was not able to concentrate his mind Sometimes, indeed more often than not, he was unable to follow the arguments in the court and would put questions to the lawyers in a language which none understood and which had no bearing on the case before the court It was a very pathetic sight to see Imam reduced to this unfortunate position by sheer misfortune Indeed, he even dozed on the Bench occasionally

This state of affairs probably reached Nehru's ears and I subsequently learnt that Chief Justice Sinha had in fact communicated the position about brother Imam's mental condition to the Prime Minister The Prime Minister

met Imam half a dozen times and came to the conclusion that it would not be fair to Imam himself, and to the court, to ask him to be the Chief Justice after Sinha's retirement That is why nearly three months before Sinha was to retire, the Union Government announced that, after Sinha's retirement, I would be the Chief Justice Naturally, I was not very happy that I should have become the Chief Justice in such unfortunate circumstances

During my tenure as Chief Justice of the Supreme Court, the Court had occasion to hear a Reference[1] This Reference, which as usual was heard by the entire court, arose from a conflict between the Allahabad High Court and the Uttar Pradesh Legislature As a result of certain events, warrants had been issued by the Speaker of the House against the two judges of the Lucknow Bench who had issued rule on an application made by a citizen to the court challenging the validity of the warrant issued by the U P Legislature On the issue of the warrants by the Speaker, the whole Allahabad High Court sat and stayed the warrants of the Speaker of the Legislative Assembly That gave rise to the Reference which raised issues of historical importance At this place, I am not going into the details of that dispute nor into the merits of that controversy I will only quote some passages which answered the questions referred to the Supreme Court

Having thus discussed all the relevant points argued before us and recorded our conclusions on them, we are now in a position to render our answers to the

1 Opinion of the Supreme Court of India on Special Reference No I of 1964 (Reference by the President of India under Article 143 of the Constitution of India regarding the powers and the jurisdiction of the High Court and its judges in relation to the State Legislature and its officers and regarding the powers, privileges and immunities of the said Legislature and its members in relation to the High Court and its judges in the discharge of their duties)

five questions referred to us by the President Our answers are

(1) On the facts and circumstances of the case it was competent for the Lucknow Bench of the High Court of Uttar Pradesh, consisting of N U Beg and G D Sahgal, JJ to entertain and deal with the petition of Keshav Singh challenging the legality of the sentence of imprisonment imposed upon him by the Legislative Assembly of Uttar Pradesh for its contempt and for infringement of its privileges and to pass orders releasing Keshav Singh on bail pending the disposal of his said petition

(2) On the facts and circumstances of the case, Keshav Singh by causing the petition to be presented on his behalf to the High Court of Uttar Pradesh as aforesaid, Mr B Solomon, Advocate, by presenting the said petition and the said two Hon'ble Judges by entertaining and dealing with the said petition and ordering the release of Keshav Singh on bail pending disposal of the said petition, did not commit contempt of the Legislative Assembly of Uttar Pradesh

(3) On the facts and circumstances of the case, it was not competent for the Legislative Assembly of Uttar Pradesh to direct the production of the said two Hon'ble Judges and Mr B Solomon, Advocate, before it in custody or to call for their explanation for its contempt

(4) On the facts and circumstances of the case, it was competent for the Full Bench of the High Court of Uttar Pradesh to entertain and deal with the petitions of the said two Hon'ble Judges

and Mr B Solomon, Advocate, and to pass interim orders restraining the Speaker of the Legislative Assembly of Uttar Pradesh and other respondents to the said petitions from implementing the aforesaid direction of the said Legislative Assembly and

(5) In returning our answer to this question which is very broadly worded, we ought to preface our answer with the observation that the answer is confined to cases in relation to contempt alleged to have been committed by a citizen who is not a member of the House outside the four walls of the Legislative Chamber A judge of a High Court who entertains or deals with a petition challenging any order or decision of a Legislature imposing any penalty on the petitioner for its contempt or for infringement of its privileges and immunities, or who passes any order on such petition, does not commit contempt of the said Legislature, and the said Legislature is not competent to take proceedings against a judge in the exercise and enforcement of its powers, privileges and immunities In this answer we have deliberately omitted reference to infringement of privileges and immunities of the House which may include privileges and immunities other than those with which we are concerned in the present Reference

After the Supreme Court pronounced its opinion on the Reference, the Court was applauded by the public at large, but the legislatures of the country, 'including of course, Parliament, did not like the view we took Incidentally, this opinion appears to have been sent by Prime Minister Lal Bahadur Shastri to several senior judges

in England and the States One morning I got a letter from Lord Denning praising the opinion in superlative terms and making the characteristic observation that he hoped that, if such questions were raised before his court, he would have the courage to take the view which we had taken and the command over the language in which our opinion was expressed I got similar compliments from Earl Warren, Chief Justice of the Supreme Court of the United States and several other judges in America and England That is how I came to know that the opinion received publicity among the judges of the foreign courts by reason of the fact that the Prime Minister of India had circulated it, presumably to find out their reaction[2] I did not know why this unusual step was taken by the Prime Minister My relations with the Prime Minister were extremely cordial, but I thought it would be inappropriate to ask him about it

When in 1965 I happened to visit the United States and other foreign countries as Chief Justice, having received a formal invitation from Earl Warren to visit the States, I found that the opinion which had been sent round had already gained me considerable publicity which I really did not deserve I will refer to this fact later when I deal with my foreign tour

There is another incident in relation to this Reference which might as well be mentioned After I became the Chief Justice, M V Jayakar of the Swastik League, who was a great friend of mine, took the lead and, in collaboration with several public institutions to which I belonged before I left for New Delhi, organised a function in my honour in the Cowasji Jehangir Hall S K Patil, a personal friend of mine who was Union Minister at the time,

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2 In fact the Government of India had published the opinion in a booklet form —*R A J*

presided Among the speakers was Mr Palkhiwala Mr Patil, in his characteristic speech, attributed to me several merits In my reply, I said 'All the merits which Patil saheb has attributed to me are the result of his imagination and have been expressed by him in his typically eloquent words' Then I incidentally referred to the controversy between the U P Legislature and the Allahabad Judiciary, which was very much in the Press at that time, and remarked that in these days when India had become free and we had adopted a progressive written constitution, each one of the constituents of the State, the Executive, the Judiciary and the Legislature was inclined to claim sovereignty These claims for sovereignty were, I explained, true within a very limited sense, basically it was the constitution, which was the fundamental law of the country, that was sovereign I conceded, and I always held that view, and continue to hold it even today, that the constitution was amendable under Article 368 as it originally stood subject to the conditions prescribed by it, and that Parliament's power to amend the constitution was subject only to the limitation expressly mentioned in the proviso to the said Article But I made it clear that, though Parliament had the power to amend the constitution, after it exercised its power, the amended constitution again became supreme and Parliament like every other constituent of the State had to be loyal to that amended constitution This was a clear statement of the constitutional position as I saw it

But little did I realise that this would create a storm in Allahabad legislative circles It was said that I had already expressed an opinion on the controversy between the Legislature and the Judiciary and that it was very unfortunate that I should have done so, holding as I did the highest position in the judicial world of India Again, those, who were excited by the controversy, did not notice

the fact that what I pleaded was the fundamental, basic supremacy of the constitution of India and I emphasised that all the constituents of the State had to be faithful to the constitution When passions are aroused and men's minds are overcome with anger, reason goes to sleep and all kinds of misconception and misunderstanding take the field Subsequently when passions subsided and reason raised its voice, the Uttar Pradesh Legislature realised that what I had said in my speech at Bombay was a basic constitutional truth and it had no relevance at all to the controversy which ultimately came before the court at the instance of the President in the form of a Reference and it had no relevance at all to the merits of the controversy

As Chief Justice, I had to make appointments of judges to the Supreme Court and to express my opinion about the recommendations of the Chief Justices of different High Courts for appointing their nominees to their respective courts In regard to the latter category of appointments, the procedure was that the initiative to recommend the names for appointing was always taken by the Chief Justice of the High Court The Governor of the State expressed his opinion on that recommendation, of course, in consultation with the Chief Minister When the recommendation along with the observations of the Governor came to the Home Ministry — as Judiciary was then under the Home Ministry — it was forwarded to the Chief Justice for his opinion It has been my consistent experience that, if I agreed with the recommendation, it was accepted, if I did not, it was not The Union Government attached, and I hope continues to attach and will always attach, decisive importance to the voice of the Chief Justice of India After all, he knows better who should be eligible for promotion to the High Court, and in case he wants to get some information, he can get in

touch with the Chief Justice of the High Court concerned Neither the Governor nor the Chief Minister nor the Home Ministry would have any means of forming a proper opinion about the merits of the person recommended That was the convention and it is undoubtedly a valid and basically sound convention

In case the Government of the State, through the Governor, wanted to suggest another name, then the opinion of the Chief Justice was invited in regard to that name and the recommendation of the Government along with the opinion of the Chief Justice was forwarded to New Delhi and in due course the same was sent to the Chief Justice of India No name was sent by the Chief Justice without the knowledge of the Governor, nor by the Governor without the knowledge of the Chief Justice

During my tenure as Chief Justice of India, I had, unfortunately, to deal with many delicate situations I heard complaints against the Chief Justice of the Hyderabad High Court from persons of status whom I regarded as reliable and respectable, that the Chief Justice did not show sufficient independence in the discharge of his functions and even in regard to the administrative orders he passed This latter category included transfers of Subordinate Judges and of District Judges Instances were brought to my notice where the Chief Justice showed lack of independence in dealing with certain disputes When the number of these complaints became very large, I consulted my colleague Subba Rao who was the predecessor of the Chief Justice in question, and Subba Rao indirectly but clearly suggested that the complaints might not be entirely without substance He, therefore, advised me, as I intended to do, to go to Hyderabad and make

an informal enquiry on the spot after taking the Chief Justice into confidence

Another unfortunate position was brought to my notice in regard to the Chief Justice of Madras That was not about his independence or his ability as a judge but about his age The allegation was that he had already passed sixty-two[3] though, according to the age shown by him, he was younger This allegation reached the President who sent the papers to me for an enquiry The Chief Justice of Madras, whose age was in dispute was indeed a competent judge and, if this unfortunate controversy had not arisen, I might probably have thought of inviting him to join us on the Bench of the Supreme Court He wrote short and sound judgments and his knowledge of law was very good But the point against him was of an ethical and moral nature and made it impossible for me to consider the possibility of bringing him to New Delhi I had therefore to go to Madras to hold an enquiry into that matter as well Since I had to go to Hyderabad and Madras, lest the public might feel that I was visiting the two High Courts because there were some matters to inquire about, I included in my tour a visit to the Mysore High Court also

When I went to Hyderabad, I took the Chief Justice into my confidence I told him the gist of the complaints which I had received and inquired from him whom I should consult in this matter I said in fairness 'You give me the names of your lawyers and your colleagues whom I should take into my confidence and ask relevant questions' I told him plainly that I would record a brief summary of their answers He supplied me with the list and it was precisely the lawyers and judges named by him in the list that I met To my disagreeable surprise,

3 Age of retirement of High Court Judges —*R A J*

not only all the lawyers but even most of the judges supported the complaint, and one or two judges, who were rather half-hearted in supporting the complaint, indicated to me that that was out of purely personal considerations The Chief Justice was an old friend of theirs and they did not want to embarrass him I told them This is not a matter of doing harm to the Chief Justice It is a matter of protecting the integrity and the reputation of the High Court, and these surely are more important than the possible harm to the reputation of the Chief Justice, which may follow if any action is taken on the complaints After meeting the lawyers and judges named by the Chief Justice, I had an extensive talk with the Chief Justice and frankly and clearly communicated to him that from the enquiries — informal but extensive which I had made — I had unfortunately come to the conclusion that many of the complaints were well founded I also told him that I did not want to suggest any action which would discredit him in the eyes of the public, but I would propose to the Union Government to send him to Madras as the Chief Justice of that High Court In fact I reminded him that he was originally a lawyer at Madras and also a judge of the Madras High Court before Andhra Pradesh was formed Naturally he was not willing but I could not help him I told him that I would not make this recommendation to the Union Government if I was not satisfied that the complaint against the Madras Chief Justice also was well founded, in which case I would ask him to retire and that would cause a vacancy I told him further that if that complaint was not well founded, I might think of taking the Madras Chief Justice to New Delhi as my colleague in the Supreme Court In either case there would be a vacancy in the Madras High Court, and he could easily fill that vacancy I ended up telling him "It will save your mental disturbance from incessant

complaints against you, and you will be able to work for the remainder of your period as Chief Justice of a big High Court in peace, amidst surroundings with which you are thoroughly familiar" That took me to Madras

I followed the same procedure in Madras I told the Chief Justice that complaints had been received that he had deliberately understated his age when he was appointed a judge and that he had already passed the age of superannuation I then asked him to give me a list of lawyers and judges with whom I should hold an informal enquiry He gave me the list and I met the persons named by him As in Hyderabad, so in Madras I told the Madras Chief Justice that I would record a brief summary of the evidence received by me To my horror, everyone supported the allegation that the Chief Justice was older than sixty-two and the age given by him, when he became a judge, was not true I found this unanimous opinion was supported by some circumstantial evidence which, though not conclusive, could not be treated as totally irrelevant I was staying in Raj Bhavan and after my informal enquiry was over, I called the Chief Justice for a quiet talk I told him 'The evidence of persons named by you is unanimous Even so, I am bound to give you an opportunity to show that the evidence is unreliable' He said that he would send his evidence to New Delhi Later he sent me some evidence which was worthless I suggested to him that it would be dignified if he retired, but he did not listen to my advice Nevertheless I was very anxious not to advise the President to take any official action though the President had sent the file to me I got in touch with the Home Minister and asked him to talk to the Chief Minister of Madras, who knew the Chief Justice very well, and advise him to retire The message which the Union Home Minister conveyed to the Chief Justice of Madras through the Chief Minister of that State was that "if the Chief

Justice did not desist from attending the Court the next day onwards, it would be my painful and unfortunate duty to advise the President to take suitable action" The situation did not arise, because the Chief Justice retired

As to the transfer of the Hyderabad Chief Justice to Madras, difficulty was raised by the Chief Ministers of certain States and the Prime Minister was somewhat embarrassed So far as the Madras Chief Justice was concerned, he had the grace to act on his own and no problem was created But the Chief Justice of Hyderabad was not willing to be transferred though constitutionally the Union Government could transfer him I explained to the Prime Minister the entire circumstances and I said "Mr Prime Minister, this is a matter in which three of us are concerned I am concerned as the Chief Justice of India, you as Prime Minister and Dr Radhakrishnan as the President If I am able to satisfy you both that my recommendation to transfer the Chief Justice of Hyderabad to Madras is fully justified, then I suggest, you should accept my recommendation Otherwise the position of the Chief Justice of India would be extremely anomalous and, I am sure, you will not drive me to an embarrassing position"

Lal Bahadur Sastri was very friendly with me Somehow he liked me He said 'No, Chief Justice, that situation will never arise Only give me a little time to pacify some of my Chief Ministers" He then asked me to prepare a short note on the dossier of the Chief Justice in this matter but not to sign it That dossier would be shown to the Chief Ministers who might not be familiar with all the relevant facts and who were themselves interested in maintaining the dignity and independence of the High Courts He anticipated no opposition from them "after all the facts are brought to their notice in the form of a dossier, which will go as a dossier prepared by my office,

on information received from several sources including your informal enquiry' This was done and in due course the Chief Justice of Hyderabad was transferred to Madras

A third problem of a similar type I had to face and that was in regard to Patna I had decided to bring Chief Justice Ramaswamy of that Court to the Supreme Court I had however learnt on my visit to Patna that the number two of the Patna High Court was very unpopular with his colleagues They were so dissatisfied that most of them were not even on speaking terms with him, I was told I had occasion to go to Patna for a function There I met the concerned judge and told him what I had heard about the state of affairs in Patna I suggested to him that rather than finding it difficult to administer the big High Court with hostile colleagues, he might like to go to Orissa as Chief Justice of the Orissa High Court He was not willing, but it seemed to me there was no alternative I was so satisfied on the material I got in the informal enquiry which I held by talking with senior lawyers and most of the judges These names were given to me by Ramaswamy and I indicated to the concerned judge, who was then in hospital, the names of the gentlemen, lawyers and Judges with whom I had held the enquiry It appears that his grouse was against Ramaswamy, and I could understand his feelings But the atmosphere was surcharged with groupism By all accounts, the concerned judge was in a hopeless minority So, on my return to New Delhi I reported to the Prime Minister what I had discovered, and suggested that the judge be transferred as Chief Justice of the Orissa High Court, and that the Chief Justice of the Orissa High Court be brought to Patna as Chief Justice I showed the Prime Minister the synopsis of the evidence which I had recorded, and apparently he also made some enquiry and was satisfied that, all things

considered, the recommendation I had made would be in the interest of the Patna High Court

Later in the week, Lal Bahadur Sastri sent for me and he said "Vice-President Zakir Hussein is somewhat disturbed by your recommendation' A greater gentleman, a true scholar, modest and humble—it was difficult to come across Even then, the constitutional position was that the Vice-President did not come into the picture in regard to the recommendation that I had made and I had to take a strictly constitutional view However, having regard to the fact that I held Zakir Hussein in high esteem, I told Shastri 'I will not go to the Vice-President myself to explain to him the true position because my responsibility is to satisfy you, Mr Prime Minister, and the President But if he, who knows me very well and, I hope, has regard for me, so wishes, I may meet him with pleasure and place all these facts before him '

Next day, Zakir Hussein called me for a breakfast At the breakfast, the great gentleman that he was, Zakir began by saying "I hope, Mr Chief Justice, I am not trespassing on your jurisdiction by asking you a few questions ' I said "Zakir saheb, I hold you in such high respect that any question you ask can never amount to a trespass on my jurisdiction and power ' I then told him the whole story and gave him a summary of the evidence I had collected and assured him that my recommendation to send the Patna Judge to Orissa was intended to save him from embarrassment and not to do him any harm, though, of course, it was true that the Orissa High Court was not as important as the Patna High Court Alternatively, if he was appointed Chief Justice of the Patna High Court, on the evidence which I received, I felt no doubt that cliques and groups would chew up the reputation of the Court and would make the task of the Chief Justice almost impossible and,

in that case, it might become necessary for me to intervene and recommend to the President to take the very step which I was now proposing Zakir saheb was apparently satisfied, when he saw the evidence, that the course I was recommending was both in the interest of the judge and in the interest of the Patna High Court At the end of the breakfast I said to him 'Mr Vice-President, I have done my best to put my point of view before you' When I reached home, I got a telephone message from the Prime Minister that Zakir saheb had just telephoned him that the information which the Chief Justice had very fairly and elaborately given to him satisfied him that his recommendation was proper and in the interest of both the individual and the institution

I confess that the action I took in these three cases gave me no pleasure On the contrary, I felt very unhappy and uncomfortable, but as Chief Justice I had no alternative, and in making these recommendations my conscience was clear I had no personal feeling of ill-will against any of the three judges At least one of them, in my opinion was able enough to come to the Supreme Court As I look back I feel I did my duty by the judiciary by suggesting the drastic steps in the cases of three Chief Justices

I have already referred to the opinion tendered by the Court on the Reference made to it by the President in regard to the conflict between the Legislature and the Allahabad High Court, and I have also pointed out that it was really a conflict not between the Legislature and the High Court but between the Legislature and a common citizen of this country This opinion gave rise to an incidental consequence which it may be worthwhile to recall

The Chief Minister of Punjab had been repeatedly inviting me to go to Chandigarh because the people of Chandigarh wanted to hear me speak I said, "Mr.

Chief Minister, I am not a professional speaker, true, I do make speeches but I make them on appropriate occasions If a suitable occasion requires me to visit Chandigarh, then I will certainly deliver a speech" What is the occasion I can create?" he asked me, and I said 'The obvious answer is, bring about the separation between the Executive and the Judiciary This has still not been done in your State and I will be delighted to inaugurate the separation' He said that he would do the needful and then formally invite me

True to his word, separation between the Executive and the Judiciary was introduced and I was formally invited to inaugurate it The Chief Minister made it a grand occasion Since the subject was of my choice, I delivered what even I thought was a fairly good speech Falshaw, the Chief Justice of Punjab, who presided, described the speech as the best speech he had ever heard, and the Chief Minister shared his view At the end of the speech, the whole audience gave me a standing ovation I felt very happy, not so much because my speech was appreciated, but because the Chief Minister had kept his promise and had brought about the separation of the Executive from the Judiciary

In my speech I traced the history of this problem of the separation of the Executive and the Judiciary, and I described how in Bombay, the Chief Minister of undivided Bombay State, Morarji Desai, had introduced the separation scheme by an Executive Order when he found that the Law passed by the Bombay Legislature was not receiving sanction as promptly as he wanted from the Union Government While describing the merits of the scheme, I incidentally referred to the fact that there was a marked difference between the politicians and the judges Some of the politicians sometimes gave you the impression that

they regarded themselves as infallible, while all the judges were conscious that they were fallible and I quoted Learned Hand who had said that a judge who made no mistake was yet to be born

Little did I realise that this statement, which was innocuous, would be completely misreported by an English daily The statement was published in a box' saying that the Chief Justice of India claimed that judges were infallible while politicians were fallible, and the heading read 'The Chief Justice claims infallibility for the Judiciary I did not see that paper But next morning in Parliament there was great excitement and some members rose and said that the Chief Justice was trying to do propaganda in favour of the Judiciary following the line of reasoning adopted by the court in the opinion recently rendered on the famous Reference That night Home Minister Nanda rang me up and said "Have you seen what has happened in Parliament?" I said "Yes, I have read the report but I do not know what it was all about" Then he sent me a copy of that paper which contained the news in bold letters Home Minister Nanda told me that Speaker Hukam Singh, who held me in high esteem was amazed that I should have made such a statement and was in a very angry mood So he told me You better get in touch with Hukam Singh and tell him what your real statement was" Before Nanda asked me to get in touch with Hukam Singh, I told him what I had stated, and he said "My God, what! The paper report was exactly the contrary of what you said!" I told Nanda 'Is it at all likely that I should make this statement attributed to me? My speech has been tape-recorded and it is going to be printed A printed copy will be available to you and Hukam Singh and you may find that the statement was exactly what I have told you" I added that Learned Hand's dictum that a judge, who commits no mistake,

is yet to be born, is my favourite quotation and I advise judges wherever I go to keep this statement present in their minds all the time that they are discharging judicial functions, and this I did in my speech at Chandigarh

Thereafter I rang up Hukam Singh I said "Mr Speaker, I understand that you are upset by the news in the box published by an English paper, but what has been published is exactly the contrary of what I stated Then I told him what I had actually said I also told him that my speech had been tape-recorded and it would be printed, and I would ask the Chief Minister to send him a copy Hukam Singh was satisfied But there was whispering in the corridors of Parliament that the Chief Justice was inclined to do propaganda for the Judiciary in accordance with the views expressed by the Court in the opinion on the Presidential Reference

I am tempted to mention three events in my life which stand out vividly in my memory The first relates to my visit to Jaipur to open a new hostel which the Rajasthan University had built Dr Mohan Singh Mehta, a versatile personality, had a very rich and varied career and administered the University with remarkable success He somehow liked me I do not know where we had met first In all probability it was at a meeting for Adult Education in which Mehta was and is passionately interested After our first meeting we wrote to each other occasionally and met at the University Grants Commission s office One day I got a letter from Vice-Chancellor Mehta that he wanted me to open a newly built University Guest House So on the appointed date I went to Jaipur with Shalini The hostel was opened It was followed by dinner It was at this dinner party that I first met Mirdha who was the Chairman of the Legislative Assembly of Rajasthan and who later became the Deputy Chairman of the Rajya

Sabha We stayed in the main room that night, and next morning I delivered the promised speech I spoke on the Universities and their function in a modern democratic welfare State I compared the function of the Universities with that of law All told the speech was well received and Mehta was very happy

The second event which I remember is my visit to Tirupati in a formal manner Rama Rao, who is a genius at managing religious institutions, had invited us We attended the morning prayer सुप्रभातम् and were then taken round the temple with temple *kalashas* on our heads Then we went inside the *sanctum sanctorum* and sat there for forty-five minutes where *puja* was being performed After we came out, Rama Rao showed us the glittering jewellery of the deity and explained to us the principles on which the institution was being managed The Venkateswara temple is probably the richest religious temple in India, but it is organised and managed in a very modern and efficient way under a special Act It runs a University, a Sanskrit *Patashala* and a college at New Delhi When the scheme of this college was placed before Delhi University for its approval, some technical objections were raised but as a Member of the Executive Council of the University, I helped the organisers by removing the technical objections raised by the officers of the University and the college began its career and is now thriving The University which the temple conducts is known as Venkateswara University Later, I had occasion to visit this University to deliver a convocation address

The third incident was of a similar character

Mamasaheb Dandekar, who had a distinguished academic career in Philosophy and was a Professor of Philosophy in S P College, Pune, was the recognised leader of the *Warkari* cult in Maharashtra He devoted

the whole of his time after his retirement to the service of this cult His speeches on *Jnaneswari* were extremely popular One day I received a letter from Mamasaheb inviting me to go to Pandharpur to open a new *mandap* in the temple of *Vithobha* Vithobha or Vithal is the deity worshipped by the Warkaris and is regarded as the Venkatesvara of the west I wrote to Mamasaheb that I was not a Warkari and frankly could not claim to be a religious man in the orthodox sense of the term He wrote back that the *mandap* was named *Gajendra Mandap* and, apart from the fact that he regarded me as qualified to open the *mandap* and address the Warkaris, the fact that the name of the *mandap* and the inscription would remind generations that I performed this auspicious ceremony should be sufficient inducement to me So I went to Pandharpur on the settled date and Shalini and I performed the worship of Vithobha

Having mentioned these two religious events, I ought to make it clear that, in my view, belief in true and rational religion was in no sense inconsistent with secularism Secularism as it is understood in the west is basically and fundamentally anti-religion, anti-god and anti-church On the other hand, our Constitution makes it clear that secularism means tolerance of all religions Important fundamental rights have been conferred relating to religion The Constitution recognises that whereas some people may not believe in religion at all and yet they are entitled to all the rights of citizenship, others (and their number is legion) believe in religion and that does not affect their status as citizens Some people seem to think that secularism means anti-religionism, but in my view that is not the Indian constitution's concept of secularism at all You may be non-religious, irreligious, or religious, you are a citizen all right, you have all the rights of a citizen, and, of course, you are subject to all the obligations, but religion

as an institution is recognised in the Indian way of life and has been given a place of pride in the constitution with sufficient safeguards Secularism merely means that no religion has the monopoly of religious wisdom Our secularism is based on the principles laid down by the *Bhagavad Gita*

येप्यन्यदेवता भक्ता यजन्ते श्रद्धयान्विता ।
तेऽपि मामेव कौन्तेय यजन्त्यविधिपूर्वकम् ।। (IX-43)

which means that even the devotees of other gods who worship with full of faith, they also worship Me, O son of Kunti, though contrary to the ancient rule ' My object in making this digression is to emphasise the fact that, when I worshipped Vithobha and Venkatesvara I did not feel at all that it was an unusual act Religion, in the best sense of the word, is in my view a necessity Whether the existence of God can be proved or not is a different matter

The Indian constitution merely insists that secular and religious matters are different altogether Let religion live and discharge its function for social good and not dabble in matters which are secular I have discussed this question at length in my lectures on Secularism and the Indian Constitution ' under the auspices of the University of Bombay[2] My conscience was absolutely clear in worshipping Vithobha and the Lord of the Seven Hills At the time, I was performing the worship, I felt an indescribable sense of exhilaration If that means I am irrational in my outlook on life, I would cheerfully plead guilty to that charge

I am not religious in the traditional sense of the term I am religious in the sense that I believe that 'there are more things in heaven and earth, Horatio, than are dreamt of in your philosophy' Prayer in the real spiritual sense

2 K T Telang endowment lectures published by Tripathi, Bombay

has a place in life and prayer does play an important role in the affairs and lives of men, prayer which makes you look inward and think of the ethical, spiritual, righteous side of life and of one s duties It is in this sense that I entered the two temples as a devout Hindu and performed *pujas* The impression left in my mind by those two solemn occasions is still alive

When I was in the Supreme Court, I was invited by the Ambedkar Satkar Committee to unveil the magnificent statue installed in a central place at Poona, and I readily accepted that invitation The committee thought that I was a great friend of B R Ambedkar and believed in the majesty, sincerity and complete dedication with which he had worked for the community A man of outstanding intelligence, who can easily be compared to Tilak, was not appreciated fully in his life-time, and, just as in earlier days Maharashtra could not appreciate Agarkar and Phule, so in Ambedkar's time he was not appreciated When I unveiled the statue, I did my best to do justice to the various traits and facets in Babasaheb's career and, to my agreeable surprise, all the points I made were fully appreciated by the large crowd around me, which was not highly educated I had known Ambedkar very well and I always felt that it was a tragedy of Indian history that Ambedkar was ultimately driven to become a Buddhist Of Course, Buddhism and real Hinduism are ultimately one, but the ceremony of conversion shows that Ambedkar thought that his people would never get justice from Hindus and there was no escape from accepting a religion which is based on compassion, social equality and love

As Chief Justice, it was my privilege to recommend to the Union Government names of persons whom I wanted to be appointed as my colleagues This is a very important power and every wise Chief Justice must take care to exercise this power after deep and mature deliberation

freely, independently and without favour or fear. I claim that I did observe this principle both in the appointments which I actually made and those which I refused to make.

One morning the Chief Justice of a High Court called on me. It was a Saturday and I gave him a cup of tea. He talked about several things pertaining to his court and discussed problems which faced him. After the discussion was over, I found that he was hesitant to leave, and I asked "Chief Justice, is there anything more that you want to say?" He said with some hesitation: "Yes, I want to suggest to you, Chief Justice, to consider me for appointment to the Supreme Court." I did not interrupt him. Then he mentioned to me his qualifications, his experience, the excellence of his judgments and his long tenure as a judge. Then he started comparing his merits with those of others. At that stage I stopped him. I told him: "Chief Justice, surely you realise that you have done something which is unworthy of your position. I did not interrupt you so long as you were addressing me about yourself though that was objectionable; it virtually amounts to canvassing, which is never done. But now that you are about to say that you are superior to others, that surely is the limit. This is the first time, Chief Justice, that any judge of a High Court, much less a Chief Justice, has come to me to canvass for himself. Such an attempt to canvass for oneself disqualifies the judge who does the canvassing. But let me assure you that I will not decide this question on the ground that you were so unwise as to canvass for yourself. I will consider your merits along with the merits of other judges whom I have in mind and try to come to a conclusion which I, after due deliberation, consider to be right, proper and appropriate." The Chief Justice did not come to the Supreme Court.

I thought of inviting to the Supreme Court, Bachawat of the Calcutta High Court, after reading his judgments

and hearing general reports about his ability and his character Just then a friend from Calcutta told me casually when he saw me that Bachawat was going on long leave He mentioned this without knowing what was in my mind about Bachawat As soon as he left, I wrote to the Chief Justice of the Calcutta High Court requesting him to ask Bachawat not to go on leave Bachawat did not know why But he came to know when he read the announcement about his appointment to the Supreme Court I had not known Bachawat before, nor in fact had I ever met him After he came to New Delhi, he called on me I was reading a newspaper Bachawat stepped in and said Can I meet the Chief Justice?' I said. "Here is the Chief Justice May I know who you are?" And he said I am Bachawat" I said 'Bachawat, my sincere congratulations to you I am sure my choice will be fully justified' This will show how appointments can be and could be made purely on merits without any personal consideration I wanted a judge who had both Original and Appellate experience and who was familiar with company law and other mercantile laws with which the Original Side judges had always to deal I had also read many of Bachawat s judgments and they struck me as very cogent, lucid and brief in the presentation of his viewpoints My expectation about Bachawat was fully satisfied After he joined the court, he and I became very good friends

At long last, 16 March 1966 was soon approaching, and I began to look back to 6 March 1945 Before I parted, the usual farewell dinners and parties took place Farewell parties were not shunned by me I was averse to the idea of sitting judges accepting parties because I always thought if the judges started accepting parties from private members of the Bar, it was likely to create misunderstanding We must remember that our clients

are still not quite familiar with the sophisticated manners of life and they are easily misled by private meetings between members of the Bar and the Bench Not that judges should be afraid of such meetings, or should shun them altogether, but they should bear in mind this fact as relevant in determining their conduct

I shall mention one fact in relation to these dinner parties As soon as I joined the court, I received an invitation from a lawyer whose name I did not know He telephoned me and said that he would like to meet me I enquired what the purpose was He said "No, I want to invite you for a dinner party I am calling the Chief Justice and other judges and I would like you to join us", and he added, ' every one feels that your addition to the court has strengthened the court I was taken aback and I immediately reacted by saying "Of course my addition to the Bench has added to the strength of the court in that one more member has come in, nothing more than that" I also informed him that unfortunately I was engaged that night and so could not accept his invitation

Two weeks later, the same gentleman rang me up again He said "Judge, I want to see you I want to take a date from you on which the dinner could be arranged' This time he was determined to pursue and I wanted to make matters clear to him I said "Sir, do not misunderstand me Personally, I dine with people whom I know I do not begin my acquaintance with people by dining with them If by chance we meet in course of time and become friends, an invitation from you for dinner may have to be considered, but not till then Please do not ring me up again for this purpose, and may I beg of you not to misunderstand What I have told you in regard to my policy of dining with members of the Bar is not meant only for you it is meant for all members of the

Bar" He said "In Delhi, judges dine with lawyers very frequently" I said 'I do not wish to express any opinion on that point, you will understand' This way the matter ended Subsequently I learnt that that gentleman became a judge of a High Court though he had not practised in the Supreme Court nor in the High Court Again true to my impulsiveness, I walked up to the Chief Justice and said 'Chief, excuse me, I have heard it said by some respectable persons whom I happen to know that the said gentleman has become a judge because he organised so many dinners for judges including the Chief Justice Of course I know that what weighed in your mind cannot possibly be the number of dinners he gave you, but the public is likely to misunderstand" Then in order to mollify his feelings, I narrated to him a story of Beaumont

One day Beaumont and Rangnekar were hearing an appeal from the Original Side and when the appeal was called out, counsel for the appellant began to argue Rangnekar turned to Beaumont and whispered in his ears "Do you see, Chief, that bulky, fat, tall man sitting behind the counsel of the appellant ?' Beaumont said, I do, he is too tall to be missed' Rangnekar then added 'You know what he did, Chief? This morning I received from him a large basket full of lovely *alphonso* mangoes" 'What did you do, Rangnekar, about that basket ?" asked Beaumont Of course, I returned it summarily with a warning that such things ought not to be done" "What a shame, Rangnekar ? If you did not want that basket, you could have sent it on to my bungalow I got one and if I had received one from you it would have been two and, I assure you, the *alphonsos* were very sweet and delicious" Then he added "I have looked at the appeal papers and I take it you have also done the same In another twenty-five minutes the fellow will realise that mangoes are not evidence in the case and the sweet taste

of the mangoes cannot make the appeal any better When in a few minutes, with your concurrence, I proceed to dismiss the appeal, he will know that the basket sent to me went in vain '

There are three incidents with reference to Prime Minister Lal Bahadur Shastri which I vividly recall The first incident was when Shastriji expressed a desire that Mrs Shastri and he would like to have a quiet meal with us so that he could talk to me on some important subjects I agreed, with pleasure He added "No formality and no other invitee ' I said ' Understood and agreed" Somehow Shastri's relations with me had become extremely cordial and almost personal I admired him and he liked me Once or twice he indirectly suggested to me that after my tenure as Chief Justice was over, I should take some foreign assignment and he mentioned to me that Dr Jivraj Mehta who was the ambassador then in England was due to retire and that he would be very happy if I agreed to take his place I said "Mr Prime Minister, I am at present Chief Justice and it would strictly not be right that I should consider your proposal Not that I do not understand your goodness and kindness to me, but you will appreciate my position But if you ask me off-hand, my reaction is not to go out of India on any foreign assignment I would like to devote my life after retirement to the service of my University in Bombay" He said "In any case, I will see that you do not leave New Delhi"

Thereafter Shastri came to our place for a quiet meal It was a very simple meal prepared in the ordinary Deccani style He liked to have toast instead of chappatti and Mrs Shastri was keen on having *pan* after dinner We provided both It happened, however, that as the meal was in progress, a message came from the Prime Minister's

office that news had been received that Pakistan had entered Kashmir and that naturally interrupted the talk which was in progress after the meal was over He had to go to his office I am mentioning one fact to show how simple Shastri was, though he happened to be the Prime Minister of a big country like India He once told me "Chief justice, you and I are both *deshi banedamal* I am a shastri of Kashi Vidyapith and you are an M A, LL B of Bombay University Neither of us has the doubtful advantage of foreign education which creates in the student a sense of superiority"

During my tenure as Chief Justice, the arrangement was that the Home Minister used to come to me—he stayed just opposite my bungalow, and I used to go to the Prime Minister late in the evening after his appointments were over so that I should not have to wait One evening Shastri telephoned to me personally and said 'Please come over, there is something urgent I want to discuss with you I could not imagine what it could be But I was at his bungalow within a few minutes and as soon as I sat down, Shastri took out a piece of paper from the shelf and handed it over to me He said "Chief Justice, this is the charge-sheet forwarded to me against my colleague, T T Krishnamachari Would you please look into it and tell me whether it discloses a *prima facie* case for enquiry and, if it does, will you hold the enquiry?" I said "Mr Prime Minister, will you please forgive me if I feel reluctant to accept your request though you know in what high esteem I hold you? T T K is a personal friend of mine and besides, now a very short period of my tenure remains as Chief Justice I would rather like to devote this period to my work on the Bench than plunge in an enquiry of this kind' 'Then suggest to me the name of a senior colleague of yours I replied "I shall hand over these papers to my colleague Wanchoo, ask

him to look into them and tell him that, if he felt that they disclosed a *prima facie* case against T T K, he should be ready to hold the enquiry under the Commission of Inquiries Act as that is what the Prime Minister desires" Wanchoo agreed He looked into the papers and two days thereafter told me that, though some of the charges appeared frivolous, there were some charges which *prima facie* needed investigation I saw the Prime Minister and reported to him what Wanchoo thought, and then I went to Calcutta for some work as Chief Justice

While I was in Calcutta, Shastri sent for T T K and told him that, since I was satisfied that these papers disclosed a *prima facie* case, he would request me to hold the enquiry T T K was obviously offended and said that in no case would he submit to an enquiry He immediately left the Prime Minister's house and sent in a letter of resignation While I was at Calcutta, at my bungalow two or three telephone calls were received informing my Secretary that the Prime Minister would like to meet me as soon as I returned I returned to New Delhi the next week and immediately saw the Prime Minister The Prime Minister was all apologies for having told T T K that I was satisfied that there was a *prima facie* case and that I would be prepared to hold the enquiry With a little twinkle in his eye he said "The induction of your name has had its effect and T T K offered to resign rather than face an enquiry I offer you unconditional apology for having told him something which was untrue and which was entirely unfair to you" I could not go to T T K immediately to explain to him the true position T T K went to Madras and I had no chance to meet him after I retired He was a good friend of mine and had in January 1964 presided over one of my Lala Lajpat Rai memorial lectures[4]

4 Published later as ***Law, Liberty and Social Justice*** **(1965) by Asia Publishing House.**

It is one of my regrets that a friend of mine with whom I took pleasure in discussing several problems—social, political, philosophical, constitutional—and with whom my relationship was very cordial and indeed personal, should have died under a misapprehension that I was prepared to hold an inquiry against him This is one of the ironies of life and I will carry that regret to my grave

The third occasion, which I recall, was on the night previous to Shastri s departure for Tashkent We talked about several matters pertaining to the visit and the problems which he would have to face "The Russians are determined negotiators,' I told him, and "you will find that they know more about our quarrel with Pakistan than some of our ministers do You will have to watch your steps carefully and not succumb to coercion or inducement or persuasion or smiles or frowns He said "I look a small man but I have an iron will and you can trust me to stand up to any measure which the Russians may have up their sleeve

All the time he was talking with me about his visit to Tashkent, I got the feeling that he was apprehensive—some kind of hunch that he might not return He had had one or two heart attacks previously and he was not quite sure whether he would stand the strain of very rigorous and taxing negotiations It happened that he stood the negotiations all right, but as soon as the negotiations were over, he collapsed It is in the light of that apprehension, which he did not openly express to me, that he said "Chief Justice, my financial position is such that, if I were to die tomorrow, I do not know how my family will maintain itself In fact when I purchased a car, I had to borrow money My bank balance is almost nothing" I said "Shastriji, I feel proud to hear this Persons who become Ministers of Government at the Centre and in the States

manage to become rich within the tenure of their office, and here is a Prime Minister of India, who has been a Minister for many years and has no bank balance ' He wryly smiled Then we shook hands and I said, "*au revoir*, go to Tashkent and come back soon, victorious ' He said, "God willing I will ' That was the last I saw of Shastriji

During my tenure as a judge of the Supreme Court, I met Lord Denning Lord Denning had to deliver some lectures and he and Lady Denning were on a visit to New Delhi In the list of persons whom they desired to meet, I was one So, on a Saturday morning both Lady and Lord Denning dropped in I began by telling Lord Denning that I liked to read his judgments because they were crisp, lucid, path finding and, in one sense, essentially his own, marked a commendable departure from the traditional and conventional approach of the English judiciary He was in search of newer and newer solutions to changing problems and was not hesitant or diffident to differ from previous judgments and to enunciate propositions of his own He was unmindful whether they would receive universal acceptance or not This genuine appreciation of mine obviously pleased him Recently, reviewing his autobiographical publication, *The Discipline of Law*, a reviewer has observed, and rightly I think, that Denning s period could be described as an era in the history of the English judiciary In fact, this book, though autobiographical in the sense that it showed the contribution made by Denning s judgments to the development of English law, is itself typical in the way Denning chose to present his judicial autobiography It is not an autobiography in the ordinary sense, and that is just like Denning

Then I turned to the report which Denning had submitted to British Government on the Profumo Scandal

and I asked him Lord Denning, how did you persuade yourself to hold this enquiry? Maybe, you thought it was a national duty, and, if that is so, I would agree But what has baffled me is that, in a matter of this importance, you held this enquiry merely on affidavits without testing them by cross-examination? As I put this question to Denning, Lady Denning put in her firm approval of my question and indicated that she agreed with my suggestion that a judicial enquiry particularly on a matter of this importance should not have been held merely on affidavits without testing the statements in the affidavits Denning's defence was that the traditional method of cross-examination did not appear to be appropriate, because it would have opened the floodgates of scandal and he did not want the public life of the country to be more sullied than it already was by the incident itself There is some substance in this point, I conceded[5]

I may point out here that Earl Warren, Chief Justice of the Supreme Court of the United States, who headed an enquiry commission which investigated the assassination of J F Kennedy, adopted the same course of taking affidavits untested by cross-examination into account, examined them thoroughly and made the Report on what lawyers would call untested evidence Later, a lot of criticism was levelled against this course As a Member of the Committee of Experts of the International Labour Office in Geneva, I met Warren and put him the same question which I had put to Denning Warren had then retired and, true gentleman that he was, he said, "Chief Justice, there is considerable grace in the criticism implied in the question which you had rightly put to me"

Then Denning and I turned to several other topics such as Administrative Tribunals, necessity and utility

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5 For Lord Denning's own account of the Profumo Inquiry, see his *The Due Process of Law* p 67 et seq —*R A J*

of the House of Lords, the purpose of the dual system which prevailed only in London, Bombay and Calcutta, judicial and legal reform and so on In all these topics, I referred to the current discussion in English Legal Journals and expressed my views on them He got so much interested in the discussion and in my views which I expressed strongly, that the allotted fifteen minutes passed and it became one hour and fifteen minutes before he left my place When parting, in his characteristically modest way Denning shook my hands and said, 'Judge I have learnt quite a lot from you this morning" I replied "Lord Denning, it is just like you to say that

The aftermath of this meeting was that, when Lord Denning went to Bombay and he met our Law Minister there, he told him that your Bombay Judge with a very long name, who is on the Supreme Court, is a remarkable man I knew that he is recognised as a very distinguished judge in India, but what surprised me was that he was thoroughly familiar with the current trends of English thinking in regard to important judicial and legal issues and their reform"

At last, on 15 March, 1966, I bid adieu to all my colleagues in the Supreme Court who entertained me, to all the members of the Bar who gave me a dinner party and to the entire staff To all of them I said in all sincerity 'Now that my judicial career is coming to an end, please try to be blind to my faults, though they be many, and be kind to my merits if any With these words, my judicial career extending over twenty years came to an end

On 18 March, we left New Delhi by the Frontier Mail All my colleagues and some distinguished members of the Bar and many members of the staff were at the station to see me off As often happens on such occasions of farewell, some eyes were wet, but that is human I

responded to their feelings and did feel a little forlorn that I was leaving New Delhi never to return again "Hereafter Bombay University will be my *karma bhoomi,*" I muttered to my wife That is human life

Before I conclude this chapter, I propose to include as an epilogue to this chapter a brief summary of the series of three lectures I delivered on 28, 29 and 30 January 1964, in honour of Lala Lajpatrai under the auspices of The Servants of People s Society in New Delhi to commemorate the birth celebration of Lajpatrai, a great Indian patriot, just a few days before I took over as Chief Justice of India Over the first lecture, Lal Bahadur Sastri presided, over the second T T Krishnamachari and over the third Chief Justice B P Sinha I was persuaded to deliver these lectures by Sevakram, Secretary of The Servants of the People Society, and Dr Vidyadhar Mahajan, an advocate of the Supreme Court, who was closely associated with the Society Dr Mahajan has written a large number of books and he used to meet me off and on On all the three occasions I spoke extempore, but the lectures were shaped into a book and published under the title *Law, Liberty and Social Justice*" (Asia Publishing House) Lal Bahadur was good enough to write a Foreword 'I was glad to be present," says Lal Bahadur therein, "when Justice Gajendragadkar delivered the first of the 1964 Lajpatrai memorial lectures It is but fitting that the thought and enlightenment which he brought to bear on such profound subjects should be made available to the public at large " "In the lectures," he concludes, "delivered by Shri Gajendragadkar, we see a penetrating analysis of the delicate inter-relationship of law, liberty and social justice from one who holds the highest judicial office in the land It will be clear from these lectures that the goal we seek in this country is that liberty and

social justice should always go hand in hand and that law should be the handmaid for both"

My idea in giving a very brief summary of my thesis in these lectures is to indicate the judicial philosophy which inspired my work throughout my career as a judge and I thought this epilogue to the last chapter on my judicial career would not be inappropriate Thereafter, I have delivered several memorial addresses and they have been published Since *Law, Liberty and Social Justice* was delivered by me while I was a sitting judge, the present summary may help, I thought, to indicate the limits I set to myself in speaking on public occasions I have always felt that by his training and disposition a judge must enter the national stream of life and give a lead to society on social, educational, legal, jurisprudential, constitutional and cultural matters In *Law, Liberty and Social Justice* I have attempted that task

I began my lectures by pointing out that the opinion that Hindu Law is *Sanatana* in the sense that it is unchanging is totally wrong, and I illustrated it by several instances To begin with, one of the sources of Hindu Law is custom and in this vast country where Hindu Law prevails, custom changes from time to time and place to place It has been a typical feature of the development of Hindu Law that, though Hindu Law is based on the *Smrtis*, commentators who wrote commentaries on the *Smrtis*, tried their best to interpret the material texts as to bring the text in conformity with the changing customs of the people This was attempted by all the recognised commentators by making skilful use of the rules of *Mimamsa* which are rules of interpretation The ultimate principle of law which they recognised and which is recognised all over the civilised world is that between the law of the land and the actual custom prevailing in society there

should not be too wide a gap As customs change, law should develop and that is true about Hindu Law But these changes were effected by means of interpretation, and that led to the popular belief that Hindu Law is never changing and has always remained the same It is the same no doubt, but the same like the majestic stream of the Bhagirathi which changes every minute but does not appear to change I took the law of adoption as an instance One simple text of *Atri* that a woman should not give or take a boy in adoption without the consent of her husband has given rise to four different interpretations simply because in different states different customs came into vogue *Sadacharah* is in the words of Manu and Yajnavalkya one of the sources of Hindu law *Sadacharah* means the conduct of the good or good conduct This source was completely dried up when the Privy Council in London laid down that, in interpreting Hindu Law, courts must lay down the law as it is interpreted by the commentators recognised in the territory over which the courts had jurisdiction In pre-British days, the interpreters by adapting the rules of *Mimamsa* had changed the law, but that was overlooked by the Privy Council The result was that the changed customs, which had come into vogue, remained unrecognised in the courts of law and Hindu Law, as Maine has picturesquely pointed out, came to be governed by the voice from the grave and not by the voice of the living custom In this connection, one picturesque and significant statement of Jimutavahana deserves to be quoted He says *'Vastunah vachanasatairapi anyathakartum ashaktah,* which brings out the principle that the custom which has become popular and has received the recognition of the public cannot be altered even by a hundred texts That is the secret of regarding Custom as one of the important sources of Hindu Law

Having described the salient features of the changes made in Hindu Law, I then turned to the general question of jurisprudence I referred to the fact that H J Laski had described jurisprudence as the eye of law There are four schools of jurisprudence Historical, Analytical, Philosophical and Sociological This last school has taken the field ever since Roscoe Pound propounded it elaborately all his lifetime This school is otherwise called functional jurisprudence I then examined the four schools and their development and pointed out how functional jurisprudence as propounded by Pound ultimately led to the universally accepted theory that law is an instrument of socio-economic change Law is an instrument of change Law is not a brooding omnipotence in the sky (as Holmes observed) but it is an instrument of socio-economic change It is a branch of Social Engineering This part of the theory of Law and its functions—I have described at length by referring to several juristic thinkers and their views on the subject

Turning to liberty, I pointed out that it is an essential element in the conduct of civilised social life and that law sustains liberty But as Lord Macmillan points out, whereas Law sustains Liberty, it also protects social justice Liberty and social justice do not work in isolation but they work together in synthesis The old concept that individual liberty is an end in itself has now gone by the board, and ever since the concept of the welfare state was born, social justice has come into its own As Lord Beveridge in his 1941 report published while England was still in the midst of World War II, points out "The obligation of the Welfare State is to lead a persistent attack upon the five giant evils—poverty, disease, want, ignorance and unemployment" Once this concept of the obligation of the State is recognised, the State ceases to be content with playing the policeman s role and with

merely keeping Law and Order in the country and protecting its borders from foreign aggression Law takes note of the fact that, as society progresses industrially and economically, the unsatisfied but legitimate, expanding desires of the poorer people clamour for satisfaction As the horizon of social prosperity widens, the horizon of the legitimate hopes and aspirations of the poor also widens It is necessary to satisfy these legitimate hopes and aspirations without ignoring the legitimate desire of the employers for reasonable profit and, above all, taking into account the paramountcy of national interest This is social justice It is thus a three-dimensional concept Thus Law, Liberty and Social Justice form a synthesis and constitute the goal of welfare in modern democracy In fact, social justice is given a place of pride in the Preamble of our constitution As Friedmann has observed "It will be tragic if the law is so petrified as to be unable to respond to the unending challenge of formal or revolutionary changes in society To the lawyer, this challenge means that he cannot be content to be a craftsman His technical knowledge will supply the tools, but it is his sense of responsibility for the society in which he lives that must inspire him to be the jurist as well as the lawyer

In discussing this problem about the dynamic function of law, I have referred to the fact that, in the Victorian age, economists like Adam Smith and Ricardo, and social thinkers like Mill, supported the theory of individual liberty in absolute terms In fact, Lord Acton's well-known dictum is 'that individual liberty is absolute, is not a means but an end in itself This doctrine has now yielded place to the philosophy of a synthesis between individual liberty and individual good on the one hand and social good and social justice on the other In fact, the main theme of my thesis was that, whereas individual liberty and fundamental rights are of para-

mount importance, social justice must be regarded as relevant and valid It alone gives meaning and significance to the whole doctrine of democracy as expounded in the Indian constitution

I have given a very short resume of the thesis I had developed in the three lectures on law, liberty and social justice My only justification is to show what was my judicial philosophy and thinking when I discharged my duties as a judge The other object in giving this summary, as I have already indicated, is to show the limits within which a judge is free to express his views fully and freely on matters which are not likely to come to the court In fact, I was never tired of repeating that the function of educating society in educational, social and cultural fields is an essential part of the duty of a judge A judge is under two obligations One is positive and the other is negative He must not live in an ivory tower and not keep completely off from social movements, but must give lead to society on socio-economic and cultural matters But he must never take part in public discussion of any political issue or any controversial matter which is likely to come before the court for its decision

Chapter 13

SOME SUPREME COURT JUDGMENTS

By chance an opportunity was given to me to contribute to the building up of labour jurisprudence by several decisions which I, sitting with Wanchoo and K C Das Gupta, rendered in numerous cases We built up industrial jurisprudence, step by step, moving cautiously forward in the direction indicated by the constitution The constitution gives a place of pride to social justice In some of the earlier judgments of the Supreme Court, it was observed that the concept of social justice could not be defined and not much use could be made of this concept in every controversy between labour and capital After I joined the court, I sat with Bhagawati and S K Das to hear the case between Messrs Crown Aluminium Works and their workmen It was the turn of Bhagawati who presided over the Bench to deliver the judgment in that case Bhagawati never shirked writing judgments, but somehow he turned to me and said It is a labour matter, would you do it ? I said With pleasure ' I circulated my draft to Bhagawati and S K Das Bhagawati was a little against what he probably thought undue emphasis I was placing on the concept of social justice and he rang me up and said Would you rather tone it down ?' 'No ' I said to Bhagawati, 'I am sorry, I cannot do it If you feel embarrassed in signing this draft, you may write your own judgment, but I will sign my draft, if necessary, alone" Fortunately, S K Das agreed with me and Bhagawati, who was a great gentleman, saw that two of his colleagues had taken one view and he

readily joined us This is what I said in the unanimous judgment

With the emergence of the concept of a Welfare State, collective bargaining, between trade unions and capital, has come into its own and has received statutory recognition, the State is no longer content to play the part of a passive onlooker in an industrial dispute The old principle of the absolute freedom of contract and the doctrine of *laissez faire* have yielded place to new principles of social welfare and common good Labour naturally looks upon the constitution of wage structures as affording a bulwark against the dangers of a depression, a safeguard against unfair methods of competition between employers and a guarantee of wages necessary for the minimum requirements of employees There can be no doubt that in fixing wage structures in different industries, industrial adjudication attempts, gradually and by stages though it may be, to attain the principal objective of a Welfare State, to secure 'to all citizens justice, social and economic" To the attainment of this ideal the Indian constitution has given a place of pride and that is the basis of the new guiding principles of social welfare and common good

'Though social and economic justice is the ultimate ideal of industrial adjudication, its immediate objective in an industrial dispute as to the wage structure is to settle the dispute by constituting such a wage structure as would do justice to the interests of both labour and capital, would establish harmony between them and lead to their genuine and whole-hearted co-operation in the task of production It is obvious that co-operation between labour and capital would lead to more production and that naturally helps national economy and progress In achieving this immediate objective, indus-

trial adjudication takes into account several principles such as, for instance the principle of comparable wages, productivity of the trade or industry, cost of living and ability of the industry to pay The application of these and other relevant principles leads to the constitution of different categories of wage structures These categories are sometimes described as living wage, fair wage and minimum wage These terms or their variants, the comfort or decency level, the subsistence level and the poverty or the floor level, cannot and do not mean the same thing in all countries nor even in different industries in the same country It is very difficult to define or even to describe accurately the content of these different concepts In the case of an expanding national economy the contents of these expressions are also apt to expand and vary What may be a fair wage in a particular industry in one country may be a living wage in the same industry in another country Similarly what may be a fair wage in a given industry today may cease to be fair and may border on the minimum wage in future Industrial adjudication has naturally to apply carefully the relevant principles of wage structure and decide every industrial dispute so as to do justice to both labour and capital [1]

If I may say so, these two paragraphs attempted to lay down in my own inadequate way the foundation of industrial jurisprudence which, with the able assistance of my colleagues Wanchoo and K C Das Gupta, we tried to build up in our subsequent decisions in labour matters

After Sinha became the Chief Justice, he treated me with great courtesy, affection and consideration and often consulted me in important matters One day he

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1 A I R 1958 Supreme Court 30

sent for me and told me that he found that labour cases had fallen into arrears in a very large measure and he wanted me to attack that problem He said "Choose your colleagues and I will instruct the office to place labour matters before you" I promptly chose Wanchoo and K C Das Gupta Having sat with them in the past, I knew very well the approach of both of them Wanchoo was great in mathematics and Das Gupta was a very prominent and distinguished economist When we began to do labour cases, we had no doubt the able assistance of the well considered judgments delivered by the Labour Appellate Tribunal Even so, when the matters came to us, we had to evolve some general broad principles, but even in undertaking that task the decisions of the Labour Appellate Tribunal were no doubt helpful to us This fact must be recognised

It is not as if all labour cases came to us in the Supreme Court Some other judges tried labour matters from time to time But we did a large number When we sat on the Labour Bench, for about a month we discussed every case very carefully and decided what our general approach in such matters should be We found that our approach in regard to the broad principles of industrial jurisprudence was almost similar In dealing with industrial matters we agreed that there could be no dogmatism, no hard and fast rule We had to be a little pragmatic and evolve principles which would serve the purpose of labour vis-a-vis capitalists, and above all the national economy, that would serve the three dimensional purpose of industrial jurisprudence The three dimensions are a reasonable desire of capital for profit, a legitimate expectation of labour to share in the profit, and the knowledge which must be present in the minds of both capital and labour that unless they co-operated and produced more there could be no national progress

Neither labour can have its legitimate expectations satisfied nor capital make a reasonable profit without more production The basis of industrial relationship must therefore be a spirit of co-operation between capital and labour and their commitment to the national interest Disputes are bound to arise and they should be settled in a spirit of give and take, always remembering that the national interests are of paramount importance

Fortunately after I retired, I got an opportunity to be the Chairman of the high-power Commission of Labour and I propose to indicate in a subsequent chapter the approach which the Commission had adopted in dealing with the very comprehensive and elaborate terms entrusted to it and briefly indicate the major recommendations made I can legitimately claim that, as in the case of decisions we rendered in the Supreme Court on labour matters, so in the Report of the National Commission on Labour there was unanimity on most of the recommendations I found by experience that, if only, before any court or commission reaches any decision, there is full and frank discussion of different views and each one tries to see the other s point of view, there should not be too many occasions for dissent In fact, I do not remember that I ever wrote a dissenting judgment, and only once or twice did I sign a minority judgment

In those days the Full Bench formula evolved by the Labour Appellate Tribunal in regard to the profit-bonus gave rise to the hardy annual disputes between labour and capital almost in every industry and innumerable complicated questions Ultimately in the Associated Cement Companies case, which was heard by the full court as desired by the Chief Justice, I delivered the judgment for the full court In this judgment, the whole history of the formula was examined, all the questions

which arose year after year between employers and employees in the working of the formula were carefully scrutinised by me, and a recommendation was made at the end that the government should appoint a commission or committee to examine this matter and evolve and recommend a more satisfactory way of dealing with these disputes This suggestion was accepted and the Commission was appointed with Mr Meher as Chairman The report of the Commission led to legislation on the subject and the full bench formula is now not relevant or material

Industrial disputes generally fell under three broad categories (1) wage structure, (2) bonus and (3) discipline In regard to wage structure, our approach was that it was not a mere matter of arithmetic, but a certain ethical element came into its decision Particularly after the constitution was adopted, employees have become more articulate They expected that their lot should be bettered as quickly as possible, and social justice done In this category of disputes, subject to reasonable limitations, we adopted generally a favourable attitude to the employees

In regard to bonus, as I have already indicated, different questions in different complicated forms arise and some solutions had to be found, sometimes purely on theoretical grounds and sometimes on pragmatic grounds

In regard to disciplinary matters, we took the view that the labour courts, labour appellate tribunals and even the Supreme Court should be careful in dealing with the complaints of the employees If proper enquiry was not held and the employee was punished without due regard to the evidence on record, the courts should not hesitate to set aside the order passed against the employee On the

other hand, if an enquiry was held and it was genuine, courts should be reluctant to re-examine the matter as though the domestic enquiry was subject to appeal on facts Certain broad principles were laid down by us as to the grounds on which courts would be justified in interfering with domestic enquiries Even with regard to these, Parliament later passed a law more favourable to the employees but with that matter I am not concerned

In regard to profit-bonus, another question which arose was based on the theory that bonus was not gratuitous payment made by the employer to the employee but was intended to fill a gap between the actual wage and the living wage to which, in ideal circumstances, the employee would be entitled I ought to point out that the words 'living wage which are used in industrial adjudication represent the kind of ideal wage which employees look forward to obtain when industrially our country has made very remarkable progress In the constitution, however, the words 'living wage' have been used in the sense of minimum wage This reference to living wage sometimes raises a controversy between employer and employee, when the employer claims that he had already paid living wage to his employee and therefore there was no reason for the employee to claim any bonus at all

Such a claim was made by the Stanvac Oil Company and in the judgment,[2] which I delivered, rejecting that claim, I examined the concept of a 'living wage elaborately I pointed out that the concept of living wage was not static It is dynamic, it is expanding, it expands with the expansion of national prosperity and what may be a living wage in one country which is poor may be just

2 Standard Vacuum Refining Co vs Its Workmen AIR 1961 S C 895

a fair wage in another country which is rich The content of the concept of living wage differs from country to country, and even in the same country from time to time In a Welfare State, as the nation progresses industrially, the legitimate hopes and expectations of the employees expand, and that changes the texture of the wage structure and affects, to the benefit of the employees, the contents of the living wage All these questions were examined by me in the judgment which I delivered for the court in the Stanvac Case But even this may not perhaps be relevant now, because the payment of bonus is regulated by law

While referring to the kind of labour or industrial jurisprudence, which my colleagues and I attempted to evolve, I ought to mention one interesting episode I had gone to see Prime Minister Jawaharlal Nehru to invite him to a film show organised in aid of the Maharshi Karve Satkar Samiti of which I was the President The proceeds of the show were intended to be presented to Karve They were in fact presented to Karve at the public function and he, in turn, handed them over to Delhi University When I invited him, Nehru readily agreed, because, as he said, Who would not like to associate himself in honouring Maharshi Karve?' Then in a lighter vein he said, with an impish smile Do you know, Judge, that your labour decisions have created a panic among the capitalists and some of them have complained that a leftist has been placed on the Bench of the Supreme Court?" Of course, he did not mean it He only wanted to indicate that he appreciated the spirit in which we were trying to evolve industrial jurisprudence

I may now refer to some of the other important decisions which occur to my mind

In the two Berubari cases,[3] the court had occasion to consider the important constitutional question as to whether the Union Government had the power to concede by treaty a part of the territory of India to a foreign state The first case was elaborately argued and ultimately we decided that the State had such power In dealing with this question, somehow Article 3 of the constitution was incorrectly interpreted I did not notice the error nor did any of my colleagues, who joined me in the decision, notice it In fact, they wrote to me on reading the draft that it was a very good draft and it dealt with a very important question in a very satisfactory manner Later, I discovered that, though Article 3 of the constitution did not play any part in our decision, I had referred to it incidentally and put on it an interpretation which was not quite accurate and I was waiting to correct that error

The court was presented with an opportunity to rectify the mistake when the Berubari case came before it again on some other issue When the case was called, Mr Daftary in his characteristically humorous way began by saying My Lords, before I proceed to deal with the points in the case, may I mention " But I did not allow him to complete the sentence I said 'Mr Daftary, I know you are going to say that the Court has committed an error in interpreting Article 3 in its earlier judgment, but I am sure you will have no difficulty in conceding that that Article had played no part in the decision of the court And he agreed That error was then corrected when I delivered my judgment in the second Berubari case This illustrates the wisdom of Justice Learned Hand s dictum, which I have quoted several times, that a judge who makes no mistake is yet to be born

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3 For a fuller understanding and critical analysis of the judgments in these cases, see Seervai's "Constitutional Law of India" (2nd Edition) Vol I p 125 *R A J*

Another case which had constitutional aspects related to the interpretation of Article 16 (4)[4] The controversy arose from a circular issued by the Railway Board ordering reservation of selection posts in the Railway Service in favour of the members of the scheduled castes and scheduled tribes The question was whether this circular was outside Article 16 (4) and as such *ultra vires* In the majority judgment, which I delivered, we held that the circular fell within Article 16 (4) and was valid The question fell within a very narrow compass Equality of opportunity for appointments, which was guaranteed by Article 16 (1) and (2), to all citizens—was it really meant only for the initial appointments or did it refer to all consequential questions about promotion, salary and other contingencies of service ? The argument of Rangachari was that the only point on which equality was guaranteed was appointment *simplicitor* and nothing more In other words, once the power of the equality guaranteed by Article 16 (1) & (2) is honoured, rules of promotion, salaries, leave and all incidental but important matters relating to service fall outside the doctrine of equality In rejecting this argument, we held that the initial employment or appointment is only one of the matters relating to the employment or appointment The other matters relating to employment would be provision as to the salary and periodical increments, promotion, terms as to leave, as to gratuity, as to pension and as to the age of superannuation Similarly in respect of appointments such matters include all the terms and conditions of service pertaining to the said office All these matters are included in the expression matters relating to the employment or appointment ' under Article 16 (1) We also held that Article 16 (1) and (2) really gave effect to the equality

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4 General Manager, Southern Railway and another V Rangachari 1962 A I R S C P-86

before the law guaranteed by Article 14 and to the prohibition of discrimination guaranteed by Article 15 (1) These provisions form part of the same constitutional code of guarantee and supplement each other If that be so, it must be held that the matter relating to employment must include all matters in relation to employment both prior and subsequent to the employment which are incidental to the employment and form part of the terms and conditions of employment We also held that the power of reservation which is conferred on the State under Article 16 (4) can be exercised by the State in a proper case not only by providing for reservation of appointments but also by providing for reservation of selection posts This construction would serve to give effect to the intention of the constitution-makers to make the safeguards for the advancement of backward classes and to secure their adequate representation in the services

Similarly under Article 26, one of the questions which agitated public opinion was in respect of the meaning of the expression matters of religion" under Article 26 (b) and "religious practices' under Article 25 (2) (a) The earlier trend of the Supreme Court judgments was that religious practices and matters of religion have to be decided in the light of the opinion of the community and not by the court This view meant that, in case a controversy arose between the parties in regard to the meaning of these two expressions, in deciding "whether a given religious practice is an integral part of the religion or not, the test always would be whether it is regarded as such by the community following the religion or not" This view however was dissented from by the court in two decisions[5] in both of which I spoke for the

5 (i) Durga Committee, Ajmer, V Syed Hussein Ali (1962) S C R 353
(ii) Tilkayat Shri Govindlalji Maharaj, V The State of Rajasthan (1964) S C R 561, 620, 623

unanimous court We held that where a dispute arises as to what is the religious practice or what are matters of religion, the question will always have to be decided by the court In doing so, the court may have to enquire whether the practice in question is religious in character and, if it is, can it be regarded as an integral and essential part of the religion ? The finding of the court on such an issue will always depend upon the evidence adduced before it as to the conscience of the community and the tenets of its religion

I have already stated that in trying to develop industrial jurisprudence, we should not be unduly dogmatic No doubt some principles have to be evolved and laid down and followed, but some situations may arise where pragmatic considerations may have to be adopted Take for instance the case of Assam Oil Company Ltd, New Delhi v Its Workmen[6] In that case a woman employee had been dismissed by the employer company merely for the reason that she had joined the trade union movement Plainly the order of dismissal was unjustified and we recognised that there was no doubt that the rule is that in case of wrongful dismissal, the dismissed employee is entitled to be reinstated and this rule had to be applied, but we pointed out that there could be cases where it would be expedient not to follow the rule and to direct reinstatement Thus, as, in the present case, the dismissed employee occupied a position of confidence with her employer and the employer stated that he had lost confidence in her and was dissatisfied with her work, it would not be, in the special circumstances of the case, fair either to the employer or to the employee to direct reinstatement and compensation might be appropriate relief *Prima facie,* this decision is inconsistent with the well recognised and universally followed principle that on dismissal being

6 A.I R. 1960 S C 1264

found wrongful, reinstatement must follow In this particular case, the position was that both the employee and the employer were dissatisfied with each other—the employee because she had been wrongfully dismissed and her anger was fully justified, and the employer, for unjustified reason, was dissatisfied with her work and it would be very embarrassing for him to take her back in the position where his confidence in her was absolutely shaken

Besides, it appeared that subsequent to her dismissal, the employee found employment elsewhere and received adequate salary In addition, she had received from the appellant employer Rs 2,700 as subsistence allowance during the pendency of the present appeal When we asked the Additional Solicitor-General what would be a fair order to make in the special circumstances of this case, though an order paying compensation would be inconsistent with the principle of industrial law, he agreed to pay Rs 12,500 in addition to Rs 2,700 which had been already paid to her We took the view that this was fair amount of compensation Two views are possible in such a case One is, enforce the principle of the law and order reinstatement, but in adopting this doctrinaire view, one would be ignoring the fact that, if an order of reinstatement is executed, the employer may find several ways to embarrass the employee and make her position very difficult or he may not continue her in a position of confidence and may give her another job with the same salary Anyway, whether or not pragmatic considerations of this character should be allowed to operate in industrial adjudication is a matter on which two views are possible In that particular case, from the attitude of Mr Anthony and Janardhana Sharma, who appeared for the respondents, we inferred that the employee would prefer to take compensation and continue with another employment

That was one of the factors which weighed in our mind In any case absolute dogmatism may not always help in industrial adjudication That was our view then and continues to be my view even now

In *Standard Vacuum Refining Company of India Ltd*, V *Their Workmen*[7] Wanchoo delivered the judgment of the court over which I presided Wanchoo took the view speaking for the court that contract labour being undesirable, the dispute raised by regular workmen of the employer on behalf of contract workmen was an industrial dispute Maybe that in coming to this conclusion, a little bit of straining was involved, but contract labour is such an obnoxious system and is so virtually unfair to the employee employed by the contractor on contract basis that the sooner it is abolished by Law the batter[8]

One of the cases which Subba Rao and I had to try was in relation to a charge of murder against a D S P in Punjab and some others The case had created an amount of sensation, because it was reported that Chief Minister Kairon was interested in the case and had in fact instigated its institution On allegations pertaining to the personal interest of the Chief Minister of Punjab in the proceedings, an application was made by the D S P and his co-accused for the transfer of the case in Punjab to another court of competent jurisdiction in a neighbouring State Naturally, the case created an amount of commotion Several questions were actually raised before the court One was whether we had jurisdiction to make the order of transfer, and the second was whether there was any legitimate ground to justify the transfer of the case

7 A I R (1960) S C 948

8 To some extent this has been now done by the Contract Labour (Regulation and Abolition) Act, 1970—*R A J*

An affidavit was made by the prosecution denying the allegation of the accused that there had been a meeting in the Government guest house at Karnal which the prosecuting police officer and the Chief Minister attended and they decided upon the plan as to how to arrange evidence properly and effectively tutored It was further alleged that the Chief Minister warned the prosecuting and investigating officers that they were themselves on trial and their ability and efficiency would be judged by the result of the case

We read both the affidavits, and on the other cirumstances which were mentioned to us, it appeared to us clearly that the Chief Minister was taking an undue interest in the case and that it would not be safe to leave the trial of the accused persons within Punjab State It was recognised that Kairon had done considerable good to Punjab and had contributed to its improvement and prosperity in a large measure But he did not believe in the doctrine of the purity of means, and any means was good enough for him Having considered the entire body of evidence and the very timid and half-hearted manner in which the presence of the Chief Minister at the Karnal guest house was attempted to be denied, we were satisfied that Kairon was taking interest in the case Whether or not he actually instigated the investigating officers to manipulate a particular kind of evidence, it was difficult to say, but we were on the whole inclined to accept the fear of the accused as genuine that, if the trial was held in the Court of Sessions in Punjab, powerful influence would be brought to bear and they might be convicted though they might be thoroughly innocent It was clear that in accepting this argument, aspersion was cast on the independence of the Sessions Judge, but the counsel told us that one had to go to Punjab and see the working of the Sessions Judges to realise what a reign of terror

prevailed all over the State, lower courts of justice not excluded Ultimately the terror reached such a dimension that Kairon himself was the victim of murder, but that happened later

We did not propose to enter into the merits of the controversy about the interest of Kairon and its extent We were merely prepared to put the case of the accused on the hypothetical ground that their apprehensions were not totally unreasonable and so they could not be rejected offhand Counsel for the prosecution opposing the transfer application appeared to be very vehement When Subba Rao asked him what objection could he have if the accused were tried by Sessions of competent jurisdiction, say in U P, his only answer was that no case was made out for such a transfer We did realise that, though the evidence adduced in the form of affidavit by the accused was very strong, it would not be very easy to make a definite finding of the personal interest of the Chief Minister in the proceedings of the case But we did feel justified in taking the view that, having regard to the totality of circumstances surrounding the case, the nature of the offence charged, the status and character of the principal accused, the part assigned to him, the reasons why he was supposed to have taken part in the murder, all had created a genuine apprehension in the mind of the accused that he particularly would not get a fair trial in Punjab

We conceded that in order to transfer a criminal case, or even a civil one, from one State to another, or for that matter from one court to another in the same State, the apprehension entertained by the complainant must be genuine and reasonable But genuine' does not mean fully convincing, it must be genuine and reasonable It must not be false, frivolous, unfair and without any foundation at all In the present case, the apprehension was much stronger and so we accepted the argument that the appre-

hension entertained by the accused was genuine and reasonable, and in any case could not be regarded as unreasonable, and since the charge was one of murder and the whole evidence about the atmosphere overwhelmingly produced before us created a reasonable doubt in the mind of the accused about his getting a fair trial in that surcharged atmosphere, we thought the interest of justice would be served if the case were transferred to a court of competent jurisdiction in Uttar Pradesh, accordingly the order was made Ultimately, the Sessions Judge of U P acquitted all the accused, and, from the newspaper reports, it appeared that the acquittal was very well received, and the transfer of the case was treated as justified

Making orders of transfer is a very onerous and responsible decision Whereas making an order for transfer is apt to cast aspersion, though indirectly, on the independence of the court where the case is pending, if there are reasonable grounds to justify the apprehensions of the applicant, it would not be fair in the interest of justice to ignore that apprehension To draw a balance in cases falling on two sides of the hedge is a very difficult process to a judge, and in making a decision in such a case he can never be sure that he made the right decision He tries his best to consider the facts fairly dispassionately and to do what he thinks justice requires That is what Subba Rao and I did in that case and, if popular belief is to be treated as relevant, our decision was justified Besides, we took into account the fact that the decision of the transferee court may be subject to appeal and that was a kind of safeguard for both the parties Anyway, we made the order and it led to the acquittal of the accused

During my tenure in the Supreme Court I did a very large number of judgments In fact a friend of mine had

written to me, after I retired, that an American student had contributed an article to the *Journal* of the Indian Law Institute, in which he had dealt with what he called the behavioural pattern of the judges of the Supreme Court He had noticed, I was told, two distinct features about my career, that I rarely wrote a dissenting judgment and comparing the period for which I was on the Bench I had written the largest number of judgments In fact later, if I recollect well, an American student wrote to me when I was Vice-Chancellor in Bombay that, if he happened to come to Bombay, he would meet me and discuss these aspects which he had mentioned in his article about my record I recollect that I wrote to him a polite letter saying that I would be happy to meet him but I would not be able to assist him in his study of what he called my behavioural pattern

Whether or not arithmetically I wrote the maximum number of judgments comparing the period for which I was a judge, one thing I can legitimately claim is that I did more than my share When I was presiding over the first court I did many of the important judgments It is not a matter of vanity but I think it is the duty of the Chief Justice to do the important cases that come before the first court It is the Chief Justice who should normally speak for the court on all important and significant occasions If the Chief Justice commands the confidence of his colleagues, nobody grudges his taking the lead [9]

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9 The following articles on Gajendragadkar's contribution to different branches of law appeared in *Journal of the Indian Law Institute* (1966)

P K Tripathi, Mr Justice Gajendragadkar and constitutional interpretation (479),

Girish Chandra, Mr Justice Gajendragadkar and criminal law (588),

P W Rege, Contribution of Mr Justice Gajendragadkar to Hindu Law (606),

V Krishna Murty, Mr Justice Gajendragadkar and the civil servants (627).

Chapter 14

SOCIAL REFORM

I was drawn into the Social Reform Movement in Maharashtra in 1953 by a fortuitous and indeed fortunate circumstance This led to my presiding over the first revived Maharashtra Social Reform Conference in Pune in 1953 and the second one at Jalgaon in 1954 Tarkatirtha Laxmanshastri Joshi, whom I knew very well, came to me in 1952 and told me that certain friends proposed to celebrate the 75th birthday of Swami Kevalananda Saraswati, the Founder of Prajna Pathashala at Wai, and that I should preside on the occasion I deemed it an honour to be given an opportunity to pay my homage to Swami Kevalananda Saraswati whom I regarded as a philosopher, saint, profound scholar and leader of progressive social movement in Maharashtra He had given to Maharashtra several able, learned progressive scholars of whom Tarkatirtha Laxmanshastri was an outstanding example The function was organised on an evening on the bank of the River Krishna Swamiji was sitting there engaged in worship while the whole of Wai had gathered together to pay its homage to the scholar-saint The sight was inspiring, Swamiji sitting behind the meeting and engaged in worship, the holy Krishna flowing gently by the side of the ghat on which the meeting was held A sweet and refreshing breeze was blowing and a glorious sunset witnessing the meeting Shastriji began the proceedings by explaining the nature of the function and then invited me to preside He paid me rich compliments particularly because I came from the family of the Gajendragadkars and Swami Kevalananda Saraswati's relations with my

father were especially friendly and cordial Both were learned in the traditional sense and yet were progressive, because they knew that Hinduism was in substance a progressive way of life I was a little apprehensive when my turn came for speaking That was the first time I was addressing a large public meeting in Marathi and I was determined not to use one English word in my speech The general atmosphere of the meeting and the presence of the holy man inspired me and I did make a fairly good speech I described the nature of the work and the mission of Swami Kevalananda Saraswati and related them to the basic features of Hindu philosophy I ended my speech by saying 'If we really honour Swami Kevalananda Saraswati, we must try to understand that Hinduism is not static, but very progressive, dynamic and tolerant, and that it treats all Hindus alike as equals There is no scope for untouchability, no scope for treating women as inferior and no scope for castes, sub-castes and their exclusive limitations' I could easily feel the pulse of the audience and I realised that the speech had gone very well Shastriji, in his usual generous manner, complimented me and the speech and Swamiji blessed me I returned to Bombay to resume my work on the Bench in a very cheerful mood

It appears that Dewan Bahadur Godbole, retired Dewan of Phaltan, was present at this meeting He reported my speech almost verbatim including the cheers and applause and the ultimate ovation This created some sensation in the public mind of Maharashtra That, however, was not the end

Godbole, since his retirement, was devoting his time and energy to the service of Social Reform and Acharya Jagtap, the veteran teacher and social reformer, was his ally Godbole met Dr R P Paranjpe and Annasaheb

Maharshi Karve and suggested to them that it was time that the Social Reform Conference, which used to be held regularly in M G Ranade s time, should be revived and that I should be asked to be the president of the first session Dr Paranjpe wrote a letter inviting me to preside over the first session of the conference which they proposed to call in Pune in April, 1953, he added that Maharshi Karve strongly supported the suggestion

Godbole brought this note to my Mafatlal Park flat in Bombay I had not met Godbole before and he was generous in his appreciation of my speech at Wai I felt considerable hesitation in accepting this honour Mine had been a purely professional career and though I did speak on several subjects in English from time to time, I had never devoted myself to the problem of social reform as such, I thought that if the social reform conference had to be revived, some veteran social reformer could be chosen to preside But Godbole would not take a no from me and because of Godbole s persistence and out of respect for Maharshi Karve and Dr Paranjpe, I agreed This is how I got into the social reform movement in 1953 Some newspapers in Poona criticised me for entering into the controversial sphere of social reform while I was a sitting judge I gave thought to that problem and decided that it was not a controversial matter in the sense that it was likely to come before the court It was a matter of social significance and I felt it was really my duty as an informed citizen to express my view publicly in favour of reviving the movement of social reform and social equality among the Hindus

The great Ranade had shown by his career what a sitting judge could do in the matter of social reform He was the person who started the Social Reform Conference and every year he delivered a well considered, progressive speech on some aspect or other of social reform

Ranade, Agarkar and Jyotiba Phule were my heroes I was conscious that compared to them I was a small man, but even small men were entitled to admire great persons and follow their teachings in a sincere way That is how I took courage in accepting the command of Maharshi Karve, and the criticism from the orthodox Marathi Press did not disturb my mind The conference was held in the amphitheatre of Fergusson College, Pune on 18 April 1953 To our surprise, the amphitheatre was filled with delegates and visitors I delivered my address extempore though it was formally printed as a thesis and circulated to the delegates I began by saying that social reform in India seemed to be under a kind of curse During British rule, there was a bitter debate whether social reform should be undertaken first or political reform The great B G Tilak had thought that if movements for both social and political reform were started simultaneously, confusion and conflict might arise between reformers and non-reformers That was why he insisted on concentrating his efforts on political liberation first I do not myself, with the utmost respect to Tilak, share this view I preferred the view of Agarkar, Phule and Ranade These three patriots did not take a compartmental view of reform They thought that the revolution, which the country needed, must include social, political and economic concepts Their advocacy of a complete, radical, revolutionary movement did not receive popular acceptance, much less applause But Phule, Agarkar and Ranade stood their ground and carried on their movement throughout their lives Agarkar in his paper *Sudharak* (*Reformer*) wrote very strong articles advocating social, political and economic reform Phule launched his work of social reform by starting classes for untouchables and stoutly attacked the obscurantism which was responsible for the reactionary behaviour of the Hindu community He did

not spare the caste system and treated untouchability as a positive crime If I were asked who were the great social reformers in pre-freedom days, I would unhesitatingly mention Phule and Agarkar Shinde also joined the ranks of these two veterans

Ranade was the guide, philosopher and friend of the entire progressive movement in the country He said "A true reformer has not to write upon a clean slate His work is more often to complete the half-written sentence We cannot break with the past altogether, for it is a rich inheritance and we have no reason to be ashamed of it But while respecting the past, we must ever seek to correct the parasitical growths that have encrusted it' Ranade, who had a comprehensive vision about the political, social and economic structure of free India, said years ago 'You cannot have a good social system when you find yourself low in the scale of political right Nor can you be fit to exercise political rights and privileges unless your social system is based on reason and justice You cannot have a good economic system when your social arrangements are imperfect If your religious ideas are low and grovelling, you cannot succeed in the social, economic or political spheres This interdependence is not an accident but is the law of our nature ' It is absolutely essential that social reformers of today must realise that Ranade s statement[1] is profoundly true

Unfortunately after freedom was won, the dispute arose again whether economic reform and economic justice should have precedence over social reform and social equality The answer is the same, that social justice must take precedence, because unless you stabilise your social structure on the rational basis of social equality, the fight for economic justice would be lame and

1 See my Foreword to Natarajan's *Century of Social Reform*.

weak When you talk of social justice, you realise that the Hindu community is fragmented into castes and sub-castes which create walls of exclusiveness around themselves and breed principles of superiority and inferiority *inter se* Add to it the accursed and shameful phenomenon of untouchability Unless our social conscience is awakened and obscurantism is fought tooth and nail, our social structure cannot cease to be fragmented and we cannot have social justice at all

I examined in my speech at the Pune Conference the history of Hinduism and I said Hinduism was not a religion in the traditional sense of the term but was a broad, forward-looking progressive way of life In support of this view I quoted Sarvepalli Radhakrishnan

> "The thinkers of India are the inheritors of the great tradition of faith in reason The ancient seers desire not to copy but to create They were ever anxious to win fresh fields for truth and answer the riddles of experience, which is ever-changing and therefore new The richness of their inheritance never served to enslave their minds We cannot simply copy the solutions of the past, for history never repeats itself What they did in their generation need not be done over again We have to keep our eyes open, find out our problems and seek the inspiration of the past in solving them The spirit of truth never clings to its forms but ever renews them Even the old phrases are used in a new way The philosophy of the present will be relevant to the present and not to the past It will be as original in its form and its content as the life which it interprets As the present is continuous with the past, so there will be no breach of continuity with the past"[2]

2 S Radhakrishnan "*Indian Philosophy*" Vol 2, page 776

I reminded the delegates that Hinduism had the most ancient pedigree in the world and it had survived, because it was always open to change as changing circumstances, changing customs and beliefs unfolded themselves Castes, in the cast-iron sense, are unknown to original philosophy and religion Castes were presumably based on occupational factors But when Hindu religion began to attach irrational importance to the performance of rituals this led to the supremacy of the priestly class, and innumerable castes sprang up, the community got fragmented and the wretched practice of untouchability arose I quoted Dr B R Ambedkar who, in his book *The Untouchables Who They were and why they became untouchables,* says (1) There is no racial difference between the Hindus and the Untouchables, (2) The distinction between the Hindus and untouchables in its original form, before the advent of untouchability, was the distinction between Tribesmen and broken men from alien Tribes It is the Broken Men who subsequently came to be treated as Untouchables, (3) Just as untouchability has no racial basis, so also has it no occupational basis, (4) There are two roots from which Untouchability has sprung (a) Contempt and hatred of the broken men as of Buddhists by the Brahmins, (b) continuation of beef eating by the broken men after it had been given up by others, (5) In searching for the origin of Untouchability, care must be taken to distinguish the untouchables from the 'impure All orthodox Hindu writers have identified the 'impure' with the untouchables This is an error Untouchables are distinct from the impure, (6) While the 'impure' as a class came into existence at the time of the *Dharma Sutras,* the untouchables came into being much later than A D 400"

I summed up the proposition he ultimately enunciated and said there was some force in Dr Ambedkar's view

Another view about untouchability was that it was born out of political considerations because the Aryans, who conquered India, developed a sense of superiority against the original inhabitants of the country and gradually began to treat them as separate from themselves and as inferior to them and in course of time it led to the theory and practice of untouchability How could we quarrel against the doctrine of *apartheid* if we treated our own people as untouchables, I asked

I then turned to the philosophic aspect and said "Hinduism believes in the existence of God—the entire universe including animals and even inanimate things How can it treat human beings, who are as good as you and I, as untouchables? I referred to two definitions of Hinduism which showed how difficult it was to define Hinduism, because it was not a religion in the traditional sense Tilak made an effort to define Hinduism in these terms.

प्रामाण्यबुध्दिर्वेदेषु साधनाना अनेकता ।
उपास्यमानामनियमवैवद्धर्मस्य लक्षणम् ।।

'Reverence for the Vedas, multiplicity of the means, no definiteness about the God to be worshipped—this is the distinctive feature of Hinduism'

And who is a Hindu?—

आसिन्धुपर्यन्ता यस्य भारतभूमिका ।
पितृभूः मातृभूच्शैव, स वै हिन्दुरितिस्मृत ।।

'He is a Hindu who regards Bharat from sea to sea as his fatherland and motherland" It will be noticed that Tilak found it difficult to make a more exact definition of Hinduism He had to content himself with describing rather than defining Hinduism Tilak's description is philosophical and, in that sense, sound Savarkar made an effort in defining Hinduism This definition is based

on secular, pragmatic and imaginative, and a somewhat political view of Hinduism in its practical aspect Savarkar's effort like Tilak's tends to bring out the proposition that Hinduism is not a religion in the traditional sense of the term but, as Radhakrishnan has observed, it is a comprehensive, forward-looking way of life

Hinduism has no one prophet, not one view of philosophy, not one way of life, not one God to worship, not one behavioural pattern Its doctrines differ from place to place and time to time During its long history of 5,000 years Hinduism rose to the most glorious heights of philosophic speculation during the Upanishadic period Then followed ritualism (*karmakanda*) Sacrifices led to the predominance and supremacy of the priestly class and gave rise to many obscurantist beliefs and practices Fortunately from time to time, rebels, who were social revolutionaries, arose and tried to cure the maladies in the behavioural patterns, beliefs and customs of the people Mahavir, Buddha, Basava Nanak, Dayanand Saraswati and several others revolted against the obscurantism which dominated Hinduism What was more significant was they spoke in the language of the masses, preached social equality, made no distinction between castes and castes and the sexes They condemned the performance of meaningless rituals and sacrifices and declared that no intermediary was needed between man and God In Bengal, we had Sri Ramakrishna Paramahamsa and Swami Vivekananda, in Punjab, Dayanand Saraswati, in Maharashtra, Agarkar, Ranade and Phule The *Warkari* cult had also the same purpose of opposing the caste-system, condemning untouchability, disapproving of discrimination between sexes and preaching social equality The cult preached *bhakti* and condemned *karmakanda*

One significant source of the progressive outlook of

Hinduism is the principle authoritatively laid down by the *Bhagavad Gita*

यदा यदा हि धर्मस्य ग्लानिर्भवति भारत ।
अभ्युत्थानमधर्मस्य तदात्मानं सृजाम्यहम् ॥

"Whenever there is decay of righteousness, O Bharata, and growth of unrighteousness, then I incarnate myself in some form IV-7 Consistently with this principle, in course of time all revolutionaries, who protested against orthodox and doctrinaire Hinduism, were ultimately themselves regarded as *avatars* and the new movements which they started became a part of Hinduism This fact is recognised by the Indian constitution in defining Hindus as including Buddhists, Jains and Sikhs Hinduism recognises no heretic The doctrine of the *Bhagavad Gita* will explain why Hinduism has not recognised the doctrine of heresy as such It is well known that even *Charvaka* and *Kanada* are not called heretics despite their unorthodox views

After freedom was won, our people developed a complacent feeling that everything could be achieved by Government by means of law, just as before freedom all of us entertained the blind belief bordering on superstition, that after political freedom was won, all our economic and social problems would be automatically solved We soon learnt by experience after 1947 that political freedom did not automatically solve problems of socio-economic inequality, much less untouchability Law, though it is a powerful instrument in the hands of a democracy for bringing about socio-economic change, cannot by itself achieve that purpose unless awakened public opinion strengthens the hands of law An atrophied public conscience can never expect to achieve a socio-economic revolution merely by relying on the strength of law Therefore I appealed to the delegates to start the

Movement of social reform in right earnest and carry its message to the villages. I emphasised that voluntary agencies must play a dominant role in assisting the cause of social justice Whereas in our days of political dependence several voluntary agencies had taken an active part in socio-economic matters, they had withered away after freedom leaving everything to government This indeed was the tragedy of democratic India I pointed out that the basic philosophy of social reform was that the community at large must be taught the importance and significance of adopting a rational and progressive social outlook in all socio-economic and religious matters *Dharma* is *Samajadharma*

धारणात् धर्ममित्याहु. ।
धर्मो धारयते प्रजा ।।

That is, religion which sustains the stability of the community and assists its onward march towards the goal of social equality and economic justice It was this concept which had inspired Hindu thought in early days We forgot this progressive philosophy when we sought to obtain salvation through rituals and sacrifices *Vivekavada* should be the guiding principle of social reform Faith in Reason should be its motto Reason alone should determine the merits of any proposition It is on the strength of reason and the test of rational approach that Social Reform must march This Faith in Reason had guided its glorious journey for thousands of years We should go back to the ancient way of life and the ancient philosophy and restructure Hindu society on the basis of rationality, faith and social justice Then there would be no scope for castes and sub-castes and no room whatever for untouchability "This all-important work for the progress of the Hindu community had to be done by young, earnest, educated and sincere Hindus

assembled in this hall here and in whose faces I read earnestness and sincerity You, young men and women, carry the message of Social Reform throughout the State and see that the incessant labour put in by Ranade, Jyotiba Phule, Agarkar, Maharshi Karve and Paranjpe, who are fortunately with us present in the hall and have come here despite their age to bless us, is further carried forward' I recalled that Agarkar had emphasised the fact that freedom could not be compartmentalised and that our effort must be to establish social, economic and political freedom In Ranade's words there could be no social progress without political progress and there could be no political or social progress without economic progress It was a triangle and the three sides of the triangle must progress and must act in concert I quoted one eloquent passage from Sane Guruji's speeches and an inspiring message contained in a poem by Phule Before I sat down, I quoted the following Vedic exhortation

सगच्छध्व संवदध्व सवो मनासि जानताम् ।
देवा भाग यथा पूर्वे सजानाना उपासते ॥

"Come together, speak together, let your minds be all of one accord, as ancient gods unanimously sit down to their appointed share "

I could see that there was considerable enthusiasm amongst the delegates and the response throughout was very encouraging Veteran Karve and Paranjpe as well as Acharya Jagtap were very happy that we had made a good beginning in the direction of reviving the Social Reform Conference and inviting the public to follow the teachings of Ranade, Agarkar and Phule The Conference received wide appreciative and sympathetic acclaim from the Marathi Press Some English newspapers reported the proceedings, though not in detail

Acharya Jagtap, a venerable figure in the public life of Maharashtra, was the Chairman of the Reception Committee and he also gave valuable assistance to the delegates Maharshi Karve and Dr Paranjpe were present throughout Karve appealed to the younger generation to take charge of the movement to bring about a social revolution in the country, and Maharashtra in particular, and ended his speech by saying 'This burning torch of Social Reform which I am holding in my failing hands, I hand over with hope to the young delegates who have shown such commendable enthusiasm throughout the proceedings of the Conference"

The Second Conference was held next year at Jalgaon in 1954 It attracted a very large audience and many delegates, including young men and women of all castes Harijans attended in large number Acharya Kalelkar inaugurated it and I delivered the presidential address extempore, substantially on the same lines as my Pune address An intercaste dinner was held in which Shalini and I participated Harijans were invited in large numbers and they were very happy to sit down with us to enjoy a modest meal Thus, 1953 saw the revival of the Social Conference and 1954 saw the second session

As a result of these conferences, I got emotionally involved in the movement and almost twice every month on Saturdays and Sundays I toured the districts in Maharashtra advocating the cause of social reform My programme used to be that on one day I addressed the members of the Bar and the Judiciary on questions pertaining to law and its purport in a Welfare State and also to press them to take an active part in the movement of social reform On the next day I used to address a public meeting on the problem of social reform and persuade friends to start a branch of the Social Reform Conference

in their place Acharya Bhagwat, whom I respected, was attracted by this Movement and he invited me to open the Ranade Hostel in the village institute which he had organised at Gargoti near Kolhapur I opened the building and I addressed a large audience of villagers on the social reform movement and the message of Ranade By this time, I think, I had mastered the art of conveying my thoughts in simple Marathi without using English word At Kolhapur, in the Palace Theatre I delivered an address on social reform at which Acharya Bhagwat presided I made an incidental reference to the fact that the claim made by the Maharaja of Kolhapur that he should be recognised as a *kshatriya* should have been conceded When I made this point, some Brahmin members of the audience expressed their dissent by staging a walk-out Acharya Bhagawat, whispered in my ear "Brother, this is your triumph" At the end, Acharya Bhagawat made a very generous reference to my speech and said he hoped that I would continue my efforts and that the social reform movement would gather momentum

This kind of activity of visiting districts almost twice a month, I continued during 1954, 1955 and part of 1956 and I wanted to continue it until I retired My idea was that after retiring in 1961, I would serve my University and devote some time to social reform movement I did serve the University for some years after retirement giving my full attention to its problems, but my aspiration to devote my time to social reform did not materialise When I came back to Bombay after retirement, I spoke to a few intimate friends holding responsible positions in social life that we should make an effort to start branches for social reform throughout Maharashtra in all district and tehsil places and that I would be prepared to go from

place to place and do what I could They warned me in a friendly way "Do not be precipitate about your plan The Maharashtra of today is not the Maharashtra of 1953 If you start this Movement vigorously, some cynics might feel that you have political ambitions" Their advice appeared to be substantially justified because within a few months after my taking over as Vice-Chancellor of the Bombay University, some newspapers published an item that I intended to start a social reform movement and my idea was to stand for election to Parliament which was due next year I was upset by such reports in the newspapers and my plan to go from district to district received a jolt The only time in my life when I issued a personal explanatory note was on this occasion I issued a statement that the newspaper report alleging that I intended to stand for Parliament was untrue I was not interested in politics or in political career, but somehow my friends advice appeared to me to be not entirely unfounded I also felt discouraged from the response I got from other friends in the districts

I am not justifying my inactivity in regard to my programme of working for social reform My failure to carry out Maharshi Karve s behest has caused me deep regret which I will carry to the end of my days All I can do is to offer to the memory of that veteran social reformer my apologies with a sense of penitence I cannot forget the saying that he who excuses himself accuses himself and, if any one accuses me of failure to carry on the work which I was expected to, I will not be able to find fault with that criticism however bitter or cynical it may be

My shift to New Delhi in its turn interrupted the course of my activities On returning after an absence

of nine years when I ceased to be a judge, my time was pre-occupied with the affairs of the University I found that the response to the social reform movement was not as good as was expected and I thought I had better confine myself to the affairs of the University I was Honorary Vice-Chancellor, but I worked as full-time Vice Chancellor for the period of six years I was with the University I shall deal with that chapter in my life, separately

Chapter 15

VICE-CHANCELLOR—UNIVERSITY OF BOMBAY
(March 1966 to August 1971)

A few days before I was to retire, Mohanlal Sukhadia, then Chief Minister of Rajasthan, accompanied by his Education Minister, saw me and requested me to take up the post of Vice-Chancellor of the Rajasthan University He gave me a solemn assurance that there would be no interference with the independence of the University at any time and that I would be left free to administer it in any manner that I thought proper I was overwhelmed by the very generous words in which the request was made, but I told the Chief Minister with deep regret that I was committed to serve my own University with which I had been intimately connected while I was a judge of the Bombay High Court Besides, I told him that, as far as I could anticipate, no person, however good or eminent he might be, would be a successful Vice-Chancellor of any State University these days unless he knew the language of the State Unfortunately I knew only a bit of Hindi but I could not speak Hindi and, even if my dedication to serve my own University had not been there, I would have hesitated to honour the request made by him A few days thereafter, Dr Karan Singh met me and requested me to accept the Vice-Chancellorship of the Banaras Hindu University He said You are a Sanskrit scholar of repute, a very good speaker, and your reputation as a judge is outstanding With these assets, you will make a successful Vice-Chancellor of the Banaras Hindu University and restore it to its original glory" I gave Dr

Karan Singh the same answer which I had given to Sukhadia

I received a letter few days thereafter from the Chancellor of the Bombay University inviting me to be its Vice-Chancellor I wrote to him in reply that I was still working as the Chief Justice and it would not be technically proper for me to accept his invitation just yet However, I was closely connected with the University and I would be very happy to serve my University as its Vice-Chancellor So a formal acceptance will be sent by me in due course Meanwhile, Prof G D Parikh Rector of Bombay University, saw me and made the same request

I had been closely connected with the University of Bombay when I was a judge of the Bombay High Court I was a member of the Syndicate and Dean of the Faculty of Law As such I was not a stranger to the University In fact, about the time when I was a judge of the Bombay High Court, Chief Minister Yashwantrao Chavan had casually mentioned to me that he would like me to be the next Vice-Chancellor, because the term of the Vice-Chancellor who was then in office was coming to an end But that was not to be and I had to go to New Delhi Mr Chavan desired, and I agreed whole-heartedly with his desire, that I should serve my University when I retired When I received the letter of the Chancellor and communicated my acceptance to him, the first person to whom I conveyed the news was Yashwantrao Chavan Chavan had known me intimately for many years and he was happy that I was going to be the Vice-Chancellor of the University to which he and I both belonged

Within two or three days after I took charge I had to address a Senate meeting The Rector made a very

warm welcome speech and many members spoke in similarly generous terms I made a suitable reply I said that I was not quite familiar with all the branches of the University because though I was a Syndic and had been the Dean of the Faculty of Law, I could not claim to know all the branches of the University on its administrative as well as its academic side I further added that in Prof Parikh, I would find a tower of strength, because, by his wide experience, his keen independence and his perceptive approach, he would help me in solving any problem that the University would face Both Rector Parikh and Registrar T V Chidambaran rendered invaluable assistance to me in the discharge of my functions as Vice-Chancellor Prof Parikh was an academician of a very high order, and before he became Rector, he had been Professor of Economics in the Ramnarain Ruia College Chief Minister Chavan was thinking of appointing him as Rector, when S R Dongerkery became Vice-Chancellor of the Marathawada University He had mentioned to me the name and I had heartily supported him Not that without my support the Chief Minister would not have appointed Parikh, but the Chief Minister had great regard for me and he wanted to see whether his idea received my support and, when he saw that it did, he was very happy to make the appointment Indeed in the creation of the post of Rector, I had played a role as a member of the Syndicate I was then in the Bombay High Court There was some opposition to the creation of this post, but I strongly supported the proposal of the Syndicate that a Rector should be appointed The first appointee was S R Dongerkery He had been an efficient Registrar for several years It was after he became the Vice-Chancellor of the Marathawada University that Parikh was appointed Rector,

Parikh was quite familiar with both academic and administrative matters and Chidambaran, who had risen from the post of a stenographer, had worked in all the departments of the University, taken his B A in the meanwhile and ultimately become the Registrar Chidambaran had a firm grip on the administration and was familiar with the working of the departments because he had worked in most of the departments before he became the Registrar He was very tactful in dealing with the subordinates and colleagues and efficient in submitting notes on all important issues to me through the Rector Every morning I used to discuss with him pending problems and that helped me and, I hope, him too, to a large extent in dealing with these problems in a satisfactory way He was also familiar with the academic problems and made his contribution when I discussed them with him Besides, all the members of the different bodies of the University generously and wholeheartedly co-operated with me That indeed was the main source of my strength in doing my work as Vice-Chancellor

Mr M N Kane, who was my personal secretary, did his work to my complete satisfaction He was conscientious and thorough and he finished whatever assignment was given to him promptly and efficiently

The first problem which I had to face in Bombay University was that of morning colleges The idea of morning colleges had a tortuous history The Rector had opposed the idea of morning colleges on the very sound academic ground that the morning colleges could never be what full-time colleges were and to expect that these virtually part-time colleges would complete the course in the same four years, which full-time colleges took, was not academically sound Later,

apparently under pressure of opinion from the University community, evening colleges were started It seemed to me that, if the morning colleges were academically unsound, evening colleges were more unsound, because, in the evening, working students for whose benefit they were started would be tired Girl students could not probably take advantage of the evening colleges and, on the whole, attendance would be poor Further the quality of education which the students would receive from the lecturers would be unsatisfactory However, I decided to consult all sections of the University community Accordingly I met the professors, the members of the Senate, the members of the Syndicate and some leading citizens They all almost unanimously suggested that morning colleges should be started instead of evening colleges I myself was satisfied that this was a better idea Though academically morning colleges could never claim to be as good as full-time colleges, there was one fact which had to be borne in mind That was that the students attending the morning colleges, being working students, would generally be quite serious in the pursuit of their career The results did indicate a difference of quality in the approach of students who attended the morning and the evening colleges respectively The Rector was not convinced and he thought that the starting of the morning colleges was not desirable I fully understood his point of view, but in the circumstances I saw no alternative The change was made with unanimous consent

Learning by the experience of evening colleges, we took some steps to arrange the time-tables of the morning colleges to minimise default on the part of the students attending the classes during the last period But there is no doubt that it was a compromise solution and academically a four-year morning college cannot be expected

to be the same as a four-year day college However, once started, the institution has gone on and, on the whole, I cannot say, if reports are to be believed, that it has worked badly as apprehended by us

A kind of idealism had inspired me when I agreed to be the Vice-Chancelleor of Bombay University I took the view that like law, education has to serve a dual purpose It is to be education in the best sense of the term, and it is to be an instrument of social service and change Intellectuals belonging to the academic community and lawyers must not live in an ivory tower They must join the stream of national life and help the onward march of the community to which they belonged and of which they should regard themselves as leaders It is with this object that I took some steps which I will presently mention

About education itself, I feel that three pithy Sanskrit sayings embody the real object of education very eloquently The first is सा विद्या या विमुक्तये that is to say, that is learning which liberates the student from pettiness, narrowness, obscurantism and irrational beliefs The second saying is यः क्रियावान् स पण्डित. that is to say, he alone is a learned man who serves the community Sitting in one s chamber, reading learned books and doing research is no doubt the primary function of higher education, but it is not the sole or exclusive function An educated man must place his knowledge at the service of the community We are at present a developing country and we have to fight against ignorance and superstition, which pervert the community's outlook, and fight obscurantism which is a part of the duty of educated people The third axiom is शीलवृत्त पराविद्या: Learning consists of character and conduct Mere learn-

ing, which is pedantry, does not make a man a real scholar unless he has the two essential attributes of character and good deportment During my five and a half years association with Bombay University, I got many opportunities to dwell on these points because, I think, during this period I must have delivered more than twenty convocation addresses in different Universities

The social obligation of the Universtiy community also arises when the community needs help When Bihar suffered from a terrible earthquake, it struck me that the University should make a modest gesture by helping the victims of the terrible mishap When I broached the subject with a few friends, they were not very hopeful and they thought this was a novel idea and might not receive adequate or proper response 'Your appeal may not bring more than two to three thousand rupees but that will not be adequate and may not appear to be worthy of the Bombay University either,' they said However I ventured and issued an appeal to the University community to help our brethren in Bihar It was to be a purely voluntary collection All of us were amazed that the amount raised reached Rs 75,000 Fifty-thousand rupees I formally handed over to J P Narayan, who was visibly moved by the spontaneous gesture, and the balance I handed over to the Chief Minister for the relief of the Koyna earthquake victims This was the first experiment I made in persuading the University community to demonstrate its obligation to serve the general community

The second was made primarily at the instance of Prof Vasant Bapat I read in the newspapers one morning that Prof Bapat and his friends had decided to orga-

nise a morcha of the University community to protest against vandalism and acts of violence which were occurring in different University campuses I got in touch with Prof Bapat and inquired whether I could join them He was happy to know that his idea had appealed to me and that I was prepared to join the morcha The morcha was a total success It was heartwarming to see the large number of students led by a fairly large number of professors march through the streets A meeting was held in the compound of a school where Prof Bapat explained to the audience the idea of the morcha, and I also addressed the meeting While the morcha was passing through the streets of Bombay, the processionists were shouting "We will not allow national property to be destroyed, we will not allow the University atmosphere to be disrupted, we will not allow the smooth working of Universities and our national life to be disturbed The property which is destroyed is the property of the nation, in destroying such property the perpetrators are merely acting as vandals"

The success of the morcha gave me the idea that it would be worthwhile to invite four students (two boys and two girls) and a professor from each University and hold an all-India conference for three days where all these problems could be discussed in full Fortunately Dr K M Munshi blessed the idea He gave us the Bharatiya Vidya Bhavan s Andheri campus and rendered all possible assistance to the success of the camp I shall reproduce the letter which Munshiji wrote in the All-India University Teachers & Students Camp Number of the Bhavan's Journal[1]

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1 B J Vol XIV No 23 June 16, 1968

Kulapati's Letter

On Life, Literature & Culture

INAUGURATION OF THE ALL-INDIA SHIBIR MOVEMENT

Bharatiya Vidya Bhavan,
Bombay,
June 16, 1968

My young friend,

An All-India University Teachers' and Students Camp, representing 58 Universities in the country, was held in the campus of the Bharatiya Vidya Bhavan and the Hansraj Morarji Public School at Andheri (near Bombay) from 19 to 25, May 1968 It passed off very successfully Over 500 people—Vice-Chancellors, teachers and students—participated in this Camp It was perhaps the first of its kind to be held in the country under non-official auspices

The National Integration Colloquim, sponsored by the Bharatiya Vidya Bhavan, the Sanskrit Vishva Parishad, the Gandhi Smarak Nidhi and the Ramakrishna Mission Institute of Culture, had decided, at the meeting of its continuing committee held in New Delhi in March/April 1967, among other things, to hold this camp

The Bombay University, under the dynamic leadership of its Vice-Chancellor, Dr P B Gajendragadkar, joined hands with the colloquim in sponsoring the camp Eighteen other Universities spontaneously came forward to co-sponsor it Fifty-eight Universities deputed representatives, each two teachers and five students to take part in it The camp was inaugurated by Dr D S, Kothari, Chairman of the Univesrity Grants Commission on May 19, 1968 in the parade ground of the Bhavan's Campus at Andheri, Bombay Dr P B Gajendragadkar welcomed the gathering Several leading thinkers and

veteran educationists of the country like Jayaprakash Narayan, Sri Achyut Patwardhan, Pandit H N Kunzru, Shri Jairamdas Doulatram, Dr A L Mudaliar and others addressed it I delivered the presidential address

The concluding session of the Camp on May 24, 1968, was addressed by Dr P V Cherian, Governor of Maharashtra On that occasion, Dr P B Gajendragadkar administered a pledge in which the visitors, the Vice-Chancellors, teachers, and students took part

The Camp divided itself into four Committees for discussions in which appropriate subjects were discussed The reports of these discussions, which took place in an atmosphere of harmony, were then summarised and finally adopted by the Camp as a whole at its session on 24 May, 1968

A Committee of the Vice-Chancellors was appointed to carry on a sustained effort to promote the *shibir* idea in their respective universities

Some of the Vice-Chancellors who took part in the Camp were very enthusiastic about holding such Camps to continue the work which was so well begun at the Bombay Camp

This was a cherished dream of mine come to life For several years I have been feeling that education can be a transforming force only if a sense of partnership is created between the educationists, university authorities, the teachers and the students, and that can only come into existence by holding *shibirs* (Camps), in which all the four interests can meet on an equal footing and discuss problems of daily life, not necessarily only academic

I tried the experiment in U P and have been trying to do it in the Bhavan's colleges

I had come to the conclusion that the stage had

passed when, by the use of Don'ts', harmony could be established in academic circles It is the intellectual community, of which the students are an integral part, that can work the miracle

Thus the *shibir* movement was started in Bombay last month Its highlight was the pledge taken by the participating Vice-Chancellors, teachers and students This was a positive action, which would dissolve all antagonisms and tensions

The *shibir* movement thus launched, if properly developed and scrupulously adhered to, could create a new faith and a new vision in the minds of our coming generations

The Camp was successful beyond our dreams It also created an impact on the academic world of India to some extent

It was refreshing to see Vice-Chancellors, teachers and students from Kashmir to Kerala live together, talk together and earnestly discuss vital affairs in a free, frank and friendly manner determined to find out a solution consistent with the integrity and unity of India and the Rule of Law The response from all quarters, as I said, was spontaneous and overwhelming, the conduct of the participants was exemplary and their dedication to the integrity and unity of the nation genuine This gives me the hope that the soul of India is sound and alive

You will find a report of the camp elsewhere in this journal and I am sure, you will be happy to go through it

Yours sincerely,
K M Munshi

With his charactertistic imagination, Munshiji had so organised that copies of the Camp Number of the Bhavan s Journal were sent to Srinagar where the National Integration Council was meeting and circulated to all the members Everyone appreciated and applauded the idea and so it served its purpose

Money presented no problem in holding this conference Donations came almost unsolicited with the result that even after holding the Seminar for three days, a balance of Rs 40,000 remained which was handed over to the Bombay University for utilisation for such activities How this fund has been utilised, I have no means of knowing today

I have quoted fully the thoughts expressed by Dr Munshi in this letter because they represent my sentiments as well as his sentiments and of all those who participated in the conference I stayed on the campus for three days and did my best to participate by turn in the discussions of all the groups In retrospect, I venture to think that this conference was unique in many ways It is a pity that it was not followed by similar conferences thereafter though we left the balance of Rs 40,000 with the Bombay University for that purpose

In most of the Convocation addresses—and I delivered a very large number during my tenure as Vice-Chancellor—I pleaded in one form or another for starting a University Movement which would utilise the time of the students in the long vacation for constructive social work If such a movement were organised in a proper manner, it would establish contact between the students of different universites and make them realise their duties to the community, and if the movement gathers momentum, the community would also recognise the importance of the

work that the students should be doing during the vacation in the different villages

As an experiment in this direction, a group of the Bombay University students and teachers under the leadership of Prof M P Rege and others went to a village near Thana, stayed there for a month and tried to do constructive social work The village did not have good drinking water facilities and the students, belonging to all communities and some of whom came from rich families, did manual work, dug a well and also mixed with villagers talking to them on various subjects for their education In the evenings sometimes magic lantern slides were shown and items of entertainment were organised Medical students in the group examined the villageis to check up their health and told them what they should do to improve their health At the end, a lunch was arranged which Shalini and I attended In this lunch, the villagers, the students and their leader, Prof Rege, all joined It is this kind of work which can be easily organised by dynamic Vice-Chancellors purely on a voluntary basis No compulsion should ever be used or thought of in regard to such work An appeal to the students and teachers is certain to evoke prompt and generous response That was the experience of the Thana Camp and it was all the more the experience of the Andheri meeting of representatives of different Universities

The next item to which I would like to refer as one of the achievements of the University during my tenure is the construction of the University Campus The University needed a campus very badly Prof Parikh with the co-operation of Finance Minister S G Barve made an extensive survey and ultimately chose Kalina as the spot where the campus should be situated Government under the progressive leadership of Chief Minister Y B Chavan

made a grant of sufficient land and the campus was intended to be built on this land Prof Parikh was making all necessary enquiries in relation to the manner in which the campus should be built and that naturally took some time Ultimately he made an extensive and commendable report on the project When I took over, I was determined to see the campus would come into existence during my tenure I requested Prof Parikh to get in touch with two outstanding architects of Delhi whom I knew and to whom I had talked about the matter Prof Parikh contacted the architects They came to Bombay, ascertained the needs of the different departments which had to be shifted to the campus, discussed the various aspects of the plan which should be adopted in making their report about the construction of the building and they ultimately made a comprehensive report A model was prepared in accordance with the report and it was placed in the Convocation Hall for the benefit of the public and to enable them to make suggestions

Before this was done, a committee was appointed consisting, among others, of the famous Bombay engineers Modak and Gupchup as a small group committee which was to sanction every item of work In this committee were also included Mr Chidambaran and Mr D N Marshall Marshall was an institution in himself Everyone had regard for his honesty, integrity and ability He was the secretary of this committee The statutory Building Committee of the University was consulted and their concurrence obtained A separate committee consisting of several people—experts and laymen, including Mr Chabra of the University Grants Commission, was appointed I deliberately adopted this *modus operandi* because I wanted as many people as possible and necessary to help in the preparation of the plan and its execu-

tion, since it was a big scheme and was going to constitute the *Vidyanagari* of the future

The Syndicate approved the experts, plan, tenders were invited and contractors were engaged I do not propose to describe the several details in regard to the execution of this plan Difficulties overtook us but then we did succeed in constructing the buildings which were the first phase of the plan The foundation stone was laid at a formal ceremony for which Chavan, who had in the meanwhile gone to Delhi as Defence Minister, was specially invited The function was organised on a big scale in a shamiana, the foundation stone was laid and two trees were planted, one by Chavan and one by me I then tried another experiment of inviting students to do manual work I issued an appeal to the students to utilise three or four hours every morning during vacation for digging, because a part of the plot was uneven We arranged for their breakfast and tea and, to my agreeable surprise, a large number of students responded to the call and the work went on for a month The first day when the digging operations began, I joined the company and did some digging for a while I went out of my way to emphasise its importance and significance by organising a 'convocation at which certificates were given on behalf of the University by the Education Minister M D Chaudhary I am referring to this fact to emphasise that our students are willing to respond to calls for social work provided such work is organised with imagination and the call is issued in terms which would make an impact on their minds This no doubt is extra-curricular work but, as I said at the outset, apart from the strictly academic work which is the primary function of the University, the University community must, during the vacation, take part in social work, because University education ultimately is intended to serve as an instrument

of social change and students must realise their responsibility in that behalf

Two departments were shifted to the Kalina campus in my time Naturally the students and the teachers were not quite happy to be taken away from the centre of the city where they had worked but ultimately we realised that the campus was the proper place for a serious pursuit of the academic work of the University I understand that many more departments have now shifted there and the campus has really become *Vidyanagari* as it is called I look upon this *Vidyanagari* with a sense of pride

Like the scheme of the campus which had been pending execution for quite some time, the scheme for a foreign students hostel, for which grant had been received, was also hanging This scheme had to be executed by the State Government When the Chief Minister found that the campus scheme had started and the foundation stone had been laid, he sent for me and inquired whether I would take up the Foreign Students Hostel Scheme on behalf of the University, and funds that were lying with the Government would be handed over to the University I readily agreed The University took up the scheme drew up a plan with the help of experts, referred the matter to the Building Committee and went ahead The venue was ready in a remarkably short time In fact, the Chief Minister opened the building The Chief Minister had laid the foundation stone of the scheme on the plot which had been assigned to it and later included in the hostel This was also an achievement of which the University was proud

Since the foreign students, for whom it was meant, are likely to create some delicate problems at times, I requested my friend Prof Kothare who, besides being a distinguished academic, possesses considerable tact and

experience, to be the first Superintendent of this Hostel He agreed and resided in the flat meant for the Superintendent

One floor of this building was meant for housing Indian students coming from abroad because S K Patil, who had collected a large amount for building a hostel for the convenience of such students, had handed over that amount to us on condition that Indian students coming from abroad would be accommodated We agreed and that money enabled us to build a bigger hostel Bombay University can legitimately say that as it had a large number of foreign students on its rolls, it had to make some provision for their residence The hostel has been functioning very well, I understand

Another step which I took was to institute the Vice-Chancellor s Fund The idea was that at the time of admission to the University every student should voluntarily pay just one rupee There was no compulsion When the fund was started, many friends felt that it might prove a flop, but I had faith in the good sense of the students and my faith was fully vindicated To ensure proper utilisation of this fund, applications are called for from poor students, a Committee of Professors examines the applications and makes the allotments to the deserving students

During my tenure University departments of Marathi, Gujarati and Hindi were started and they are now doing very well

Another novel step that I took was to start a department of Hindustani classical music in August 1969 We took the unusual step of inviting the famous musician Hirabai of Bombay to inaugurate it This centre has a history When I took charge as Vice-Chancellor, a public meeting was called to congratulate me At this meeting,

my friend Mr P L Deshpande suggested that I should start a music centre in the University "It may sound untraditional,' said Deshpande in his characteristic style and invited me, almost by way of a challenge, to persuade the Syndicate to start such a centre It took time, but in 1969 the centre was started and Mr Deshpande was present at the inauguration Fortunately the selection committee found in Mr Ashok Ranade a worthy expert who fully realised the significance of the idea which inspired the Centre and under his leadership the Centre has made very rapid progress

Teacher-Student Councils were introduced in colleges and I addressed several such Councils and impressed upon them the importance of the work which they had to do I introduced the idea of celebrating one day as University Day in which all the colleges would participate The Chancellor presided over the first University Day

Just as I had begun my career by persuading the Syndicate to start morning colleges, before I relinquished charge as Vice-Chancellor, I persuaded the Syndicate to start Correspondence Courses in Arts During my tenure as Vice-Chancellor, I was invited to join the University Grants Commission I learnt that Delhi University had started Correspondence Courses and the system was working very well When I spoke about the idea of the Correspondence Courses to my friends, they thought it should not be started Just as opposition to morning colleges was based on principle, so too was the opposition to the Correspondence Courses I recognised the opposition point of view in both the cases, but in my view it was the duty of the University not only to help the higher education of the well-to-do families, but also the poorer classes and the working people who were keen on receiving University education I found that most

of the professors whom I approached were ready to undertake the task of preparing lessons, which would be circulated to the students, and examining the answers they would send back Occasionally meetings would also have to be arranged at which academic issues would be discussed A sufficient number of teachers had come forward and Mr A N Kothare, doyen of the academics of the Bombay University, was to be its first Director I remember how every evening I used to enquire how many applications had been received for these courses, because I was not sure that the plan would succeed The response was surprisingly good, 800 students joined and it was a proud occasion in my life when I invited them all to the Convocation Hall and addressed them as students of Bombay University I began the Correspondence Courses in Arts, and I understand that it has now been extended to other disciplines and has succeeded very well

When my first term of three years came to an end, the Chancellor, the Chief Minister and the Education Minister all pressed me to continue for another term and I agreed It is true that during this period I headed some Commissions appointed by the Government of India, but I so arranged the programme of those Commissions that my schedule of work in regard to the University was never disturbed I attended all the meetings of the Syndicate, Senate, Academic Council and other Committees except when I was out of India, and that was only once when I went to East Africa at the invitation of the Kenya University to deliver the Gandhi memorial lectures

Before I left the University, I had once gone to New Delhi to attend a meeting of the University Grants Commission In fact I attended all the meetings of the U G C, after I was invited to join it On my return I learnt that my

friends had decided to present to me Rs 70,000 to represent my age and organised a ceremony in that behalf Naturally I felt very happy that my work was appreciated The function was organised in the Convocation Hall Speeches were made by Justice Chandrachud, who is now Chief Justice of India, the present Vice-Chancellor Prof Ram Joshi and the concluding speech was made by the Chancellor himself I made a suitable reply and the purse, which was handed over to me, I delivered over to the Chancellor and said to him that the University was free to utilise that fund for any suitable purpose it liked I understand that the fund ultimately amounted to a lakh of rupees and a lecturership has been organised in my honour, called the Gajendragadkar lectures They are to be delivered once in two years on subjects specified in the rules made in that behalf

At the time of my retirement, some friends brought out a publication in my honour with the title 'Law, Education And Society' It contains an appreciative biographical sketch and articles on subjects pertaining to the title contributed by two judges of the Delhi Court, several professors and the Registrar, Mr Chidambaran

Only one event disturbed me during my tenure Some of the professors formulated a charter of demands and wanted me to help them in persuading the Government to agree to meet those demands I tried to see if the University Grants Commission could help, but I drew a blank I met the Chief Minister and he said it was literally impossible for him to allot the large amount which would be necessary to meet the demands Some of the demands were no doubt a little exaggerated, but I thought that some were reasonable and it is a matter of regret that I was not able to meet even the reasonable demands of the teachers The University's resources were totally

inadequate to meet any of those demands This failure of the University led to discontent among some of the teachers and I felt very uneasy about it About their terms and conditions of service, the University did what it thought to be reasonable I persuaded the managements to make grants to meet at least partially the demands of the teachers for increasing their pay I fully understand that these things did not and could not have satisfied the teachers But for this source of disappointment to me as well as to the teachers, I think on the whole I did my best during my tenure to serve the University with the co-operation of all persons The work of the University was smooth, examinations were held on time and results were declared on the due dates, and on the whole the University legitimately stood up in the academic world as one of the leading Universities

There are two or three other minor things which I would like to mention After the results are announced, the examination department gets a large number of complaints that students who deserved to pass had failed The rules of the University did not allow the re-examination of the papers of such complaining students I am told that the rules have been revised now In my time, in the absence of any rule allowing re-examination of answer papers of dissatisfied students, the policy I followed was to send for the answer papers of the dissatisfied student and satisfy myself that the marks had been properly totalled and there was no formal irregularity in the preparation of the result of that particular candidate In one case when I sent for the mark-sheet, I found that the total was wrong and the father of the student, who had complained to me saying that he was certain that there was some mistake in the result, appeared to be justified I

sent for him after looking at the mark-sheet and told him that his complaint was justified and that the needful would be done The case was taken to the Senate for grace and the boy was declared to have passed

Another interesting case was of a blind student from Gujarat He was the son of an agriculturist One day, accompanied by his friend, he came to my chamber and complained that there was something wrong with his result I explained to him that I had no power to get the paper re-examined and I could only see if the totalling of the marks was correct I asked him to see me two days thereafter Then I got the papers from the examination department and I found that, as in the case of blind students, in the case of this student also, a substitute was given to write the answers which he dictated The blind student had appeared for the Intermediate Examination and the paper in which he failed was that of Logic The substitute who was given to him to write the answers as dictated was a matriculate So I quietly sent for the examiner and told him 'Please look at this paper and tell me whether the boy's answers on the merits are wrong or whether it is spelling mistakes committed in the answers that are responsible for his failure, he had failed just by a few marks" I assured the examiner that I did not know the boy at all and was not otherwise interested in him The examiner was very fair and reasonable He reported to me the next day that the answers were right, but the words used in giving the answers were badly spelt and so the boy failed and that too by just a few marks The examiner also honestly told me that had he known that the student was blind, he would not have failed him Three days after his interview with me, the student came to my chamber again and I told

him "We are taking this case to the Senate for grace and you will be declared to have been passed' I cannot describe how happy the boy was He was about to fall at my feet I said "Stop, it is not the right thing to do If you want to, go to a temple and fall at the feet of God"

The third case was that of a Principal of a school who came to me witn a complaint that her daughter, who was clever, had failed, and she apprehended that the marks assigned to her daughter must be the marks of the student sitting next to her in the examination hall according to their numbers I said "Madam, almost every father or mother, whose ward fails, feels that the candidate should not have failed However, for your satisfaction I shall call for the papers though the rules do not permit it" I got the papers of both the students and passed them all to her She looked at them and with tears in her eyes said that her complaint was not justified I felt happy that I had removed the sense of grievance of the affectionate mother

What I did was not strictly within the rules, but I felt that above the ordinary rules there were rules of natural justice and, if mistakes were discovered, there was a remedy of taking the case to the Senate for grace

During my tenure the University conferred the honorary degree of LL D on Dr K M Munshi and Pandit Satvalekar In regard to Pandit Satvalekar, there is an interesting anecdote In my citation I wanted to quote the sentence from the *Isopanishad* which says कुर्वन्नेवेह कर्माणि जिजीविषेत् शत समाः (One should desire to live for a hundred years verily, performing his assigned duties here in this world) Pandit Satvalekar had already gone beyond 100 years and I did not know whether it would

be appropriate to quote that verse I put my difficulty to Panditji and he said Whether that verse from the *Isopanishad* should be quoted or not is for you to decide But as far as the interpretation of the verse is concerned, it means that a man should live for a hundred years performing his duties by the community and he cannot perform his duties during his minority So the true meaning of 100 years in the context is 118 I have not reached 118 yet Now you decide whether you must include this verse or not' I quoted the verse and gave the interpretation of Panditji with his consent

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Chancellor—Gandhigram Rural Institute (Deemed Universtiy) 1975—1979

It may not be out of place in this chapter, relating to my work in the Bombay University as its Vice-Chancellor, to mention my association with the Gandhigram Rural Institute (Deemed University) in Gandhigram Madurai District, Tamil Nadu, extending over a period of about five years from 1975 Prime Minister Indira Gandhi asked me to accept the position of Chancellor of the Institute When the Institute was formally declared to be a Deemed University, Indiraji came to inaugurate the Institute Shalini and I attended the inauguration and I welcomed the Prime Minister She turned to me and said, 'As usual, you made an excellent speech,' and the Vice-Chancellor G Ramachandran, and his illustrious and dedicated wife agreed with Indiraji's commendation At that time, Indiraji was engaged in a whirlwind election campaign and yet she spared one full hour for this Institute and delivered an appropriate inaugural address

Chapter 16

FOREIGN TOURS

(1)

U S A

Early in 1965, I received a letter from Earl Warren, Chief Justice of the Supreme Court, U S A, inviting me and Shalini to visit the States and deliver some lectures I also received a formal invitation from Yale University that I should deliver some lectures at that University on the Indian Constitution I consulted Mr Chester Bowles, who was then the American Ambassador in India, and expressed my fear that since Shalini and I had never gone abroad, we did not know whether we would be able to find our way about He said that I should entertain no worry on that account, because it had been decided to ask a very competent American officer, Mr Makepeace, to be our companion in the States for the one month that we would be there Then I met Prime Minister Lal Bahadur Shastri and asked him whether I should go to the United States in response to the invitation, because about that time correspondence had taken place between Lal Bahadur and Lyndon B Johnson and I was not sure whether, having regard to the angry exchange of views between them, it would be right for me to go there though officially invited Lal Bahadur said that not only was it desirable that I should go, but it was a *must* He asked me to go there and deliver as many lectures as I could in the same constructive, lucid style in which I had delivered the Lajpatrai memorial lectures That put my mind at ease and I said in reply to Earl Warren thanking him

profusely for his generous invitation and for the warm appreciation of my judicial work I have already mentioned that my judgment on the Presidential Reference in regard to the controversy between the Allahabad High Court and the Uttar Pradesh Legislature had reached not only Lord Denning and other English Judges but also Earl Warren and some of his colleagues

When the long vacation began in 1965 we left New Delhi for Bombay *en route* America At Bombay, Srimati Vijayalakshmi Pandit, the Governor, called us for lunch and Chief Justice H K Chainani organised a dinner for us at the Willingdon Sports Club There we met all the judges and their wives At the airport, many friends had gathered to bid us *au revoir* The journey was comfortable and at the airport in London there was Dr Jivaraj Mehta, an old friend of mine who was the Indian High Commissioner in England, to receive us We went with him to his house and stayed there for a day Unfortunately Mrs Mehta was in India and we could not have the pleasure of meeting her However Jivaraj looked after our comforts in the best possible way

That afternoon, a telephone call was received and I heard the familiar voice of Lord Denning welcoming me to England and requesting me to participate in the Magna Carta celebration which they were organising on a very big scale He said that he had ascertained that I would then be in London and that I should find no difficulty in accepting his invitation I said to him 'Lord Denning, your request is a command and I say, yes"

In England we were the official guests of the British Council, who gave us two companions, one for me and one for Shalini, and placed two cars at our disposal We were accommodated in Hotel Savoy, but to that part of the story I will come later

When we reached New York, Earl Warren was there to receive us, and so was B K Nehru, our ambassador in America Nehru took us to his house, gave us a big room and looked after us very well Again, Mrs Nehru was not present, she had gone to India to attend to her ailing mother-in-law But Nehru looked after our comforts and we were very happy with him Nehru is not only a cultured administrator but a very warm-hearted, generous and affectionate gentleman We felt as if we were at home so long as we stayed with him Makepeace had joined us as our companion as soon as we got down at Washington We found him to be very knowledgeable about Indian affairs and well informed about the affairs of the world, as a companion and guide, he was extremely pleasant

After a couple of days' stay with Nehru, our month's programme began We visited the Supreme Court, lunched with the judges of the Court who treated us with great courtesy Justice Goldberg arranged a glittering dinner party on a ship Goldberg had been greatly impressed by my judgment on the Presidential Reference, and all the judges expressed their appreciation and admiration for the view which the Supreme Court of India had taken and the elegant manner in which I had expressed it Naturally I felt very happy tc hear these compliments from people who were the top judges in the United States

We then went to Yale and stayed at the University Guest House There I delivered lectures on "The Indian Constitution — Its first Fifteen Years" The dean presided The audience, though not very large, comprised of members who were perceptive as well as critical, and after the scheduled talk of thirty-five minutes, twenty-five minutes were always reserved for questions and answers.

This part was no doubt trying, but on the whole I stood it well That is what the dean said to me at the end of the lecture series

When I visited a college to see how instruction was given, I found an atmosphere of complete informality Some boys were smoking, some had put on only half-shirts, and some boys had put their coats on the back of the chairs, but they were all consciously and intelligently following the lecture I realised this when the Professor made one statement of law and referred to a particular case supporting that statement As soon as the Professor completed his statement, one student got up and said 'No, sir, this case does not support the proposition you have enunciated ' "Challenge,' said the Professor "Accepted,' said the student The book was brought and the student won This is the kind of atmosphere which prevails in a University class and which is invigorating and exhilarating The teaching is by way of a kind of dialogue in which students participate It is in no way dictation by the lecturer as in our Universities and the students taking down whatever they liked Questions and answers are the essence of instruction and that, to my mind, is a very attractive feature of the teaching method that they practise in the States This method is based on what they call the 'Case method, that is to say, law is taught not merely by reference to the statutes but by cases the content of which brings out the relevance and progress of the statutory law in different branches When I was asked by Dr C D Deshmukh, the Vice-Chancellor of the Delhi University to recommend a suitable method of imparting legal education and suggesting a suitable curriculum in that behalf, my committee with the dissent of one member recommended a harmonious combination of the Indian and the American method We took the view that, in the case of some statutes, it might be

preferable to teach the statute first and follow its development by reference to relevant cases, whereas in some subjects it would be useful and valuable to take the leading cases and show the development of the statutory provisions in the light of those cases

At Yale, on Sunday, all employees go on leave and even the most distinguished guests have to shift for them selves Accordingly as soon as we got up on Sunday, Mr Makepeace said You will have to go to the hotel for tea,' and he explained to us that on this campus no service would be rendered on Sunday which was a complete holiday for the ministerial staff So we went to the nearby restaurant and Makepeace introduced me as the Chief Justice of India None of those in that hotel was unduly impressed One of the persons approached me and said "Bloke, how do you feel like being a Chief Justice of India? I said 'I feel like doing my duty just as you must be feeling while you will be doing yours' There was laughter in the whole restaurant I added that performance of duty in a devoted and dedicated manner is the essence of the responsibilities of the position which any one occupies whatever may be the field of his work

After about a week at Yale, we went to Harvard There a conversational meeting was arranged at a luncheon party and several questions were put to me and I had to answer them Some of my decisions were challenged and it was suggested that I had gone wrong In reply, I told my critic that he must be aware of what Justice Learned Hand had repeatedly said that 'a judge who makes no mistakes is yet to be born' My answer completely disarmed my critic and the atmosphere was full of mirth I did not agree to enter into an argument on the merits of the judgments for obvious reasons Then we went to Columbia for a luncheon party and discussion

were organised The advantage is that you meet many students and teachers and have a full and frank discussion on important constitutional and legal issues In this manner we covered nearly ten Universities The *modus* was the same at all such meetings and discussions We went to the University, the dean arranged a luncheon party, we met students and teachers and, during the course of the luncheon, vigorous discussions took place

Coming back to the Supreme Court, Earl Warren arranged a dinner party for us and invited Mr Hubert Humphrey, Vice-President of the U S A Humphrey's joining the party was a special honour done to us All the time that Earl Warren and I met together at dinner or luncheon parties, Earl Warren had to speak He was never able to pronounce my complete name A grand man Earl Warren, he carried his greatness so lightly, he would turn to my wife and ask, "How do I pronounce your husband s name ? and having tried it two or three times, when he got up he would not be able to pronounce the name correctly and would content himself by saying "the Chief Justice of India " Once I humourously observed that there was a complete contrast between Earl Warren and me at least in one particular respect and that was in our surnames, his was very short and mine was very long and unpronounceable Earl Warren enjoyed the joke

I lunched with several groups, and these groups belonging to different professions fired questions at me and I answered them Mr Makepeace used to tell me that I stood up very well every time I hope he did not mean it merely by way of courtesy No, Makepeace was not made that way

A tactful enquiry was made whether I would like to call on the President I consulted Ambassador Nehru,

and he emphatically said, No "Having regard to the estrangement between our Prime Minister and the President, the Chief Justice of India cannot call on the President" That is why, I suspect, Earl Warren had diplomatically called the Vice-President to the dinner party which he officially gave us

Warren had told us that unless we saw California, we could not claim to have seen the States because, according to him, California was the best part of the States Warren had been the Governor of California before he joined the Supreme Court California is no doubt a wonderful place We stayed there in a majestic hotel and at a luncheon party organised in my honour I spoke on Nehru, the man and his philosophy

Then we went to Buffalo, where also I delivered a speech But the point of going to Buffalo was to proceed to see the Niagara waterfalls Niagara waterfall is situated in Canada so that, if you want to see the Falls, you must have a passport and you are warned that, if you go across and see the Falls and when you are returning you have misplaced your passport, you will not be allowed to come back This of course is a joke Nobody who goes to see the waterfalls without a passport is likely to lose it

Seeing the waterfalls is an experience which one would never forget They furnish you with a leather overcoat, leather helmet and high boots and take you down to the place where the Falls actually fall It is a wonderful sight, and we saw it for quite some time

One of the judges of the Supreme Court who impressed me was Mr William O Douglas He was an old man but very vigorous in mind and very, very progressive in his outlook In fact, he represented one extreme viewpoint on the Bench

There is only one more incident which I must narrate I was invited to attend the annual meeting of the American Bar Association Even the judges of the Supreme Court attend this meeting As a special honour they allotted to me twenty minutes out of the sixty minutes meant for the President-elect I spoke for twenty minutes and to their amazement, without looking at the watch and without a scrap of paper in my hand, I concluded my extempore speech just when it was eighteen minutes The speech was so well received, and the audience was so surprised that without a note I spoke and I kept the schedule of time allotted to me that they gave a standing ovation for five minutes I must confess I felt very happy and flattered

Before we left the States, Nehru had arranged a formal dinner to which he invited some distinguished persons, Earl Warren being the principal among them Again there were speeches and, since it was my final speech, I tried to make as good a speech as I could As soon as I sat down, Nehru patted me on the back and said Chief Justice, I never thought that judges could deliver such eloquent speeches You spoke so methodically, in a happy, felicitous style of expression and periodicity in delivery that I wonder how you could make it without a single note Indeed in all the functions in which I spoke in America, I found that the audience surprisingly felt that speeches could be eloquently delivered, developing point by point without a scrap of note-paper in hand In the States they are generally used to read speeches and not deliver them In India, extempore speeches are common and somehow I did manage to develop a sense of time so that, if a speech was scheduled to be for forty-five minutes, I managed to sit down within forty-two minutes without looking at the watch This is a matter of habit but that surprised the audience

On the whole our trip to the United States was successful from our point of view and, when I returned to India, Lal Bahadurji told me that he had received very warm and authentic reports about the impression I had made by my speeches and particularly on the political philosophy of our Constitution which I expounded

(2) UNITED KINGDOM

After a month's tour in America, we arrived in London again This time, since the British Council had invited us officially, we were accommodated in Hotel Savoy A dinner party was organised by the British Council at which distinguished persons were present Lord Denning was amongst them The Indian High Commissioner was present The President of the British Council made a speech welcoming me and I made a reply which was followed by dinner Before we dispersed, Lord Denning told me 'My boy, just the kind of speech that should have been delivered How fine! Accept my congratulations' I said "Lord Denning you are known to be generous in appreciating other people s merits when you possess outstanding merits for which the English-knowing legal world admires you

In England, we met the Indian students and I addressed them, Lord Denning presided Here again, Lord Denning made a very flattering reference to my speech and said that his concluding remarks would appear pale and colourless in view of the brilliant speech which the Chief Justice of India had just delivered At the end of the speech, a meal in proper Indian style was arranged and we heartily enjoyed it

Then I attended the celebration organised on a grand scale in the Westminster Hall on 15 June, 1965 to commemorate the signing of Magna Carta I had

already accepted Lord Denning's request to speak on the occasion It was a glittering occasion where the entire elite of England was present The atmosphere was solemn and each felt proud that at Runnymede on 15 June, 1215, Magna Carta had been signed by King John who was not very enthusiastic about signing it On this occasion everyone read his speech whereas I spoke extempore The result was I spoke in a loudspeaker and was heard in every part of that big hall I kept my schedule as usual and finished my speech just within six minutes

At the end, I received a warm applause This is what I said 'I deem it to be a proud privilege that I should have been given an opportunity to participate in this morning's commemoration of the 750th anniversary of the sealing of Magna Carta Men love and live by symbols as ever Since Magna Carta was signed by the unwilling monarch at the Runnymede on 15 June, 1215, it has been assigned a place of pride among the historical symbols by all democracies in the world The significance of Magna Carta lies not so much in its specific provisions These dealt with contemporary problems and found remedies for grievances flowing from feudalism Its significance lies in the spirit of liberty which it breathed, the recognition which it gave to the dignity of the personality of the individual citizen, his freedom and his property, and the supremacy of law which it established Laws bind all alike, the king, the barons and the common man, that is the spirit of the message of Magna Carta '

On this occasion, as a student of Indian jurisprudence I feel tempted to recall that more than a thousand years before Magna Carta was signed, an ancient Indian

philosopher of jurisprudence had described the majesty of law in terms which may sound significant and meaningful even today The Indian jurist said 'Law is the King of kings, far more rigid and powerful than they, there is nothing higher than Law, by its prowess as by that of the highest monarch in heaven, the weak shall prevail over the strong and justice will triumph'

It is this dynamic concept of law which has been enshrined in the Indian Constitution The Indian Constitution recognises and guarantees the fundamental rights of citizens But it provides that for public good or for other reasons recognised by it, the citizen s fundamental rights can be reasonably regulated or controlled Thus the ideal set before the Indian democracy by the Indian Constitution is the achievement of socio-economic justice by democratic means In other words, it is the achievement of democratic socialism

It is in the light of this twofold concept of the Rule of Law that the Indian Constitution has provided for the supremacy of Law This doctrine contemplates that when in the pursuit of its welfare policies, the Indian democracy seeks to regulate socio-economic relations by law in order to restore balance in the social structure, remove social inequalities and economic disparities, and thereby achieve socio-economic justice, the validity of such law can be tested and tried by courts of law on grounds recognised by the Constitution Is the invasion of the fundamental rights made by the law in question reasonable, and, if yes, is it in the public good and for other causes recognised by the Constitution? Broadly stated, these two tests have been prescribed by the Consti-

tution to decide the question about the validity of the regulatory laws, and the supremacy of the courts which has been guaranteed by the Constitution in this manner is its special distinction This aspect of the rule of law may sound unfamiliar and alien in this hall, but Indian jurists claim that it is the outstanding feature of the Indian Constitution

This, the supremacy of law guaranteed by the Constitution, is correlated with the supremacy of the courts within the spheres assigned to them and within the limits prescribed in that behalf That is the integrated and comprehensive concept of Indian democracy as to the rule of law It is a progressive, forward-looking concept and of this concept we in India regard Magna Carta as a historical symbol That is why I feel very happy to join this distinguished gathering in the great ceremony so solemnly arranged this morning to commemorate the 750th anniversary of the sealing of Magna Carta'

Lord Denning is a very humane person, apart from being a brilliant lawyer and an outstanding judge He remembered that at his meeting with me in New Delhi we had given him and his wife Lady Denning some good Indian dishes to eat One day on the telephone he said Chief Justice, you remember you gave us sweet Indian dishes to eat when we visited New Delhi You must allow me to give you our dishes, vegetarian though they will certainly be" And so we went to his estate at some distance from London where Lady Denning had prepared a beautiful, delicious, vegetarian meal for us Lord Denning told me that his wife had been learning how to prepare Indian dishes for more than a fortnight I said "Lord Denning, if she can produce such fine dishes only after a fortnight s training, I do not know how I can express my

admiration for her The next day, the evening paper published a news item that Lord and Lady Denning served a vegetarian meal to the Chief Justice of India and his wife at their country house

While I was in London I had a meeting with the Lord Chancellor After exchange of mutual courtesies, he told me that he was very keen that a Commonwealth Court of Appeal should be established and judges from all the countries of the Commonwealth should be invited to join this court For instance, he said 'You would be an obvious choice from India for this court" I said Lord Chancellor, I regret I cannot agree to the scheme, because we have our Supreme Court and the idea of a court above the Supreme Court of India would be inconsistent with the independence and sovereignty of our country The Lord Chancellor was a gentleman He saw my point and he said Technically you are right, but take a non-technical view and see the good points pertaining to the scheme I said, ' I will , and he added that this scheme could be examined at the forthcoming Commonwealth Lawyers Conference in Australia

When I called on Prime Minister Harold Wilson, he said "Chief Justice, I learn that you are the only Chief Justice in the Commonwealth who is interested in the Labour point of view In fact, I am told that by your judgments, you have built up progressive Labour jurisprudence in India I said 'Mr Prime Minister, I am not vain enough to think that you have looked at any of my judgments Your remark only shows that you have been properly briefed by your aide, but I accept the compliment though I do not deserve it He also mentioned the idea of the Commonwealth Court of Appeal and I knew that the British Government was very keen about that scheme

About that time, Lal Bahadur Shastri happened to be in London by chance He was staying in a different hotel I saw him and told him "The Prime Minister and the Lord Chancellor of England tried to persuade me to accept their proposed scheme of the Commonwealth Court of Appeal I had said that the idea would be inconsistent with the independence and sovereignty of India They however asked me to consult you and leave it to you to decide whether this scheme should be accepted or not I said 'Of course, this is a matter in which the Prime Minister and his government alone can decide Parliament will also have to assent to it in order to make an appropriate change in the relevant provisions of the Indian Constitution and that by no means will be easy or desirable' "Lal Bahadurji, be careful, because they may put the same point before you, and perhaps not realising the full constitutional implications of the scheme, you may, in your goodness, say 'Well, the scheme appears to be constructive and I shall give it a favourable thought' " Lal Bahadur said "I am not such a simpleton I will not commit myself at all, particularly after you have struck a note of caution

We visited the House of Commons It was question hour The atmosphere in the House was completely informal The Prime Minister was sitting with his leg stretched against the table and it was only when a question was put in respect of his Ministry that he would rise and give an answer The proceedings were lively and sometimes the exchanges were vigorous and even acrimonious We were taken to Stratford-on-Avon where we witnessed a play of Shakespeare We took our meal there and returned the next morning Thus our stay in England, though short, was very pleasant and we met a large number of distinguished men and women

(3) EUROPEAN COUNTRIES

From England we went to Holland just for the purpose of meeting the judges of the International Court of Justice at The Hague. The Indian Ambassador received us and we stayed with him. He and his gracious wife treated us with courtesy. He arranged a dinner party at his bungalow which the judges of the International Court attended, and I had a discussion with them. In fact we attended the Court because, though the Court has very little work, that day a case had been fixed for hearing and we had the pleasure of seeing how cases were argued before that august Court.

From Holland we went to Paris where we stayed with Banavalekar, a member of the Indian Embassy. I did not know Banavalekar before, but my friend, Mr D S Joshi of the I C C had written to him about me. Banavalekar and his wife treated us with affection and we spent some days with them as though we were in our own house. In Paris, I met some of the judges and saw places of historical importance with which Paris abounds.

In Italy, we stayed with Datar and his gracious wife. The Datars are our relations and so we felt we were in our own home during our stay with them. We had the honour to call on the Pope who was gracious enough to give us a half-hour. He asked some pertinent questions about India and called the official photographer to take a photograph. I also met many judges and discussed with them legal problems of mutual interest. In Rome, I delivered a speech on the Indian Constitution. It was well attended by persons who knew English. I was surprised that so many persons knew English and were interested in my talk. At the end of my speech, intelligent and piercing questions were asked and the

whole proceedings were reported in the next day's daily paper and the editorial commended the speech as a remarkable exposition of Indian political philosophy

From Rome, we proceeded to the USSR Before I left for the States, I had received an invitation from the Chief Justice of the Supreme Court of the USSR, inviting me and some jurists to visit the USSR For my colleagues I chose Setalvad, Daftary, Pathak and Sanjiva Reddy, the Chief Justice of the Andhra Pradesh High Court We reached the USSR before our colleagues When our plane landed at the Moscow airport, there was Gorokin, Chief Justice of the Supreme Court of the USSR as well as our Ambassador Kaul to receive us Gorokin took us to a magnificent hotel where we were assigned a very spacious suite of rooms A translator was assigned to us though the Indian Embassy had a very good translator named Oak He translated all my speeches In my official visits to distinguished people and institutions, the Russian translator accompanied us

We had reached Moscow in the evening After a night's rest we were ready to begin our programme Meanwhile my colleagues had arrived and the delegation was complete Mr Kaul organised a dinner in our honour and had invited a number of the elite in town including the judges of the Supreme Court Mrs Kaul was not in Moscow, but the arrangements made were perfect nevertheless At the dinner Mr Kaul got up, made a welcome speech and invited me as Leader of the Delegation to make a reply Mr Kaul told me in English 'You go ahead and speak whatever you want, do not hesitate Mr Kaul was a very competent ambassador and, like Mr Nehru in Washington, Mr Kaul in Moscow was respected In responding to Mr Kaul's cordial welcome, I addressed myself mainly to the Russian guests and spoke briefly

on the philosophy of the Indian Constitution I pointed out that our constitutional ways and provisions were fundamentally different from those of the U S S R , and yet the two countries were friendly and the objective of both the countires was the good of the common man Mr Kaul appeared fully satisfied with my speech We visited the magnificent monument where Lenin s body is kept embalmed Gorokin took us to a trial court It was a criminal court presided over by a lady She conducted the proceedings in a very dignified manner and, though our procedures are radically different, the way the trial was conducted struck me as very dignified and efficient The accused was charged with having stolen two tons of cement from the factory where he was working It was surprising that the accused was in the first instance in the witness box and was asked about all the allegations of the prosecution To our surprise he admitted that he had committed the theft In India, if the accused had thus admitted his guilt, the trial would have ended, because we try the offender and do not try to understand why the offence was committed That is wholly outside the purview of our criminal trial In the U S S R , it is just the other way After the accused made the confession, he was asked why he committed the crime Then he said that his mother-in-law, who was staying with him always, insisted that she wanted a radio set and a refrigerator in the house and it was not possible within his salary to procure them 'The mother-in-law was supported in her insistent demand by my wife That made me desperate and I committed the theft, he said What did you do with the stolen cement? ', he was asked "I went into the market, sold it and purchased a refrigerator and a radio set That satisfied my mother-in-law and peace was restored in the family," he said The object of the presiding officer in putting these questions to the

accused was to find out the motive which made him commit the theft After the accused gave evidence, his fellow workmen were called in and put in the witness box They deposed to the effect that the record of the accused in the factory was extraordinarily good and his officer testified to it There was no other offence committed by him in the past, so that it was likely that the story deposed by him in the witness box was true

Putting the accused in the witness box is entirely inconsistent with our principles of criminal trial in India In France also, they put the accused in the witness box and ask him to give his defence of the prosecution story In other words, the Indian principle that the accused need not disclose anything but should sit mum and the prosecution must be called upon to prove every essential element of the crime alleged against the accused is not followed either in France or in the USSR Our procedure has been adopted by us from English Common Law

During the course of the trial when the prosecutor tried to interrupt the accused, the presiding judge in a very dignified manner sharply reprimanded him and said "The trial must be allowed to continue undisturbed by unnecessary interruption Please do not disturb the accused" On the whole the trial was conducted in a very dignified manner and the lady who was the presiding judge impressed me as a very competent judge The sentence was pronounced the next day I was naturally curious to find what the sentence would be like and so I asked Gorokin to make an enquiry and inform me He said "The sentence was two years' rigorous imprisonment but it was suspended and the accused was allowed to join his factory on good behaviour If within two years, should any report be received that he was not behaving well or not doing his duty properly, he would be sent to

jail If for two years he behaved properly and carried out his duties, the sentence would be deemed to have been waived In other words his record would be treated as clean"

On reflection, I found that whereas in India and indeed under the Anglo-Saxon criminal jurisprudence in the criminal trial it is the offence which is tried and not the offender This may sound a little paradoxical, but if we consider the effect of the difference in the methods of trial, we would realise that the Russian jurisprudence wants as far as possible to save its citizens and not to condemn them That is why an attempt is made at the criminal trial to find out not only whether the accused had committed the offence but to enquire why he committed the offence The enquiry is presumably made to decide the gravity of the offence and the character of the accused The character of the accused is usually not relevant in Indian criminal trial, but not so in the U S S R

Then we visited the institution which was solely devoted to the task of rehabilitating prisoners who had come out of jail They keep a record of their work in the jail and find out a suitable job for them as soon as they come out They do not like a convicted criminal to become a permanent criminal for the reason that he gets no job at all

When I was talking to the head of the institution, it occurred to me that, during my first six months as a judge, I was hearing a criminal revision application By the revision petition, the State had asked for enhancement of the sentence imposed on the accused For a petty offence the accused was sentenced to six months and the State wanted exemplary punishment to be given to the accused, because it was not the first offence but the thirteenth offence I found from the record of the

magistrate s court that the accused was just twenty-two I was shocked that a young man of twenty-two should have thirteen criminal convictions to his discredit Out of curiosity I sent for the accused from jail, and in a soft voice and friendly way I asked him 'Young man, why have you committed so many offences at such an early age? ' The young man fully understood my sympathetic approach and he burst into tears He said, ' Sir, my first offence was that I was born in poverty For a petty theft I was sentenced for two months I came out I went from door to door and I could get no employment since it was known that I was an ex-convict No other alternative was then left to me but to commit another offence and go back to jail The way our society deals with criminals,' he said in an emotional voice is that they become permanent convicts with no chance of rehabilitation '

As I was discussing with the Superintendent in Moscow, this incident flashed across my mind The Superintendent gave us figures year by year showing how many prisoners were released and how many were rehabilitated The anxiety of the State is not to lose the citizens and not to compel them to become permanent crooks and criminals This is a matter which we can, indeed ought to, consider

We went to Leningrad Gorokin was unable to accompany us because of a previous engagement He saw us off at Moscow where we boarded the train His number two, Terebilov, accompanied us to Leningrad and indeed was with us throughout the tour Terebilov had a very genuine sense of humour and proved to be an extremely pleasant companion When he learnt that all of us were vegetarians, he said "I would be a vegetarian during this tour," and so he ate only vegetarian food

We were first taken to a health resort where we stayed for a couple of days It was the capital of an important State in the USSR, where a luncheon party was arranged and speeches were made I remember one incident very well In the U S S R there is not one but several speeches delivered during the course of a luncheon party ordinarily In one of my speeches I had referred to the USSR as Russia and the host in his next speech said Though the leader of the delegation the Chief Justice of India, had made very frequent and eloquent speeches, on this occasion he had committed a mistake in calling the USSR Russia This country is not Russia, it is the USSR Russia is only a constituent State of this country" When I rose to make my speech, I apologised and I told the host jocularly, 'I am reluctant to say that even in the USSR, these provincial feelings are not altogether absent

Leningrad is a wonderful place Virtually there was no night, it was light most of the time when we were there We went into the room where Lenin stayed It was a modest room and the way in which Lenin lived was very modest indeed No pomp, no show, no secretarial staff, no posh flat or car, simple style and hard work were the features of the lives of the leaders of the Russian Revolution When I was asked to make an entry in the Visitors' Book on behalf of the Delegation and myself, I wrote that we felt proud that we could visit this room of historical importance where the great leader of the Russian Revolution had lived and worked in a simple style The revolutionary character of the work, which changed the political life of the world in one sense, appeared to be writ large in every nook and corner of this room where Lenin had lived and worked

Our visit to Moscow was officially fixed for thirteen days, but Gorokin said that the Delegation had made

such a pleasant impression on those with whom they came into contact that he would request us to stay for at least two days more We agreed

The next day we were taken to the Lumumba University and I was asked to address the students and the staff This unique University is named after the great African martyr and the number of foreign students is far more than those from the USSR Among students coming from different nations there was a complete feeling of comradeship and the atmosphere appeared to be very pleasant We were agreeably surprised to find that there were many Indian students studying at the University In my address I paid a compliment to this character of the University and then spoke on the purpose of education

Communications in the USSR are so rapid that while I delivered the speech at the Lumumba University in the morning, Kosygin, delivering a Convocation address at another institution that evening, referred in his address to the tribute I had paid to the USSR leadership on having instituted the great Lumumba University I was surprised that the speech delivered by the leader of a small delegation should have reached Kosygin and he should have thought it fit to refer to it warmly

Of this quick communication between different dignitaries, I will cite another instance We met all the judges of the Supreme Court and discussed several problems of common interest During the course of our discussions I said to Gorokin, 'Chief Justice, your country floods India with political literature, why don't you ask your government to send us the literature concerning the activities of the institution which looks after the very noble and the very valuable task of rehabilitating the convicts who are released after their conviction?" He said, "Chief Justice, it is the Finance Ministry that is responsible

It does not give us grants enough for that purpose However, we will try"

Some time after this conversation took place, we went to see the President of the USSR To my amazement, after formally welcoming the Delegation, the President turned to me and said "Mr Chief Justice, I have heard your complaint and I will see to it that the necessary literature with regard to the activities of the great institution, in which you are so much interested, will be sent to you regularly" Considering the fact that our interview with the President took place just two hours after our talk with the Chief Justice, I was greatly impressed

Our talk with the President was very cordial and I felt convinced that he fully believed in the friendship between India and the USSR Indeed even from our contacts with the eminent lawyers our impression was confirmed that the citizens of the USSR regarded India as their friend

In Leningrad, we visited the Bar Association, of which a lady was the President I enquired whether she had been made the President out of considerations of chivalry or she had won the election by dint of merit, and I was told that there was a keen contest and she won the election hands down In fact, she was the leader of the Bar

When I enquired about the manner in which the Bar functioned in the USSR, I was told that members of the Bar were free to accept any briefs they liked, but a part of the income they had to contribute to a general fund, and from this fund payments were made to youngsters who were struggling to make a living You are not free to choose where you want to practise in the USSR, it is decided in consultation with the authorities The idea is to prevent overcrowding in one place and provide for a fair opportunity for all lawyers to get briefs and make

a living This *prima facie* looks like regimentation, but it does serve an important purpose and, as a result, unemployment among lawyers is not very much of a problem in that country Of course, such a regimentation would be impermissible under the provisions of our Constitution because it would violate the fundamental right of the citizens to decide where he should practise the State can have no voice in this matter

We were taken to a camp of young lads and we were told that the camp was entirely managed by the lads themselves All of them were below twelve When we reached the place, the leader of the camp made a very good welcome speech and pronounced my name accurately The daily programme is fixed by a committee of young boys and girls and the details are determined by consensus and the camp lasts for about a month Physical activities occupy the time of the entrants mainly though the educational and extra-curricular aspects are not ignored

The last function to which I must refer is significant in many ways Gorokin had told me that, since I was a good speaker, requests had been received from lawyers that I should be invited to address them in the auditorium of the Supreme Court I learnt this was the first time the Chief Justice of a foreign court had addressed the members of the Bar, judges and other elite of the USSR Fortunately the Indian Embassy had a very good translator, Mr Oak, and I asked him to translate my speech By this time, having addressed meetings in different European countries, I had learnt the art of speaking slowly, sentence by sentence Mr Oak knew when to translate It was not as if every sentence had to be translated, but he would translate when I paused after some half a dozen sentences This scheme worked very well

I spoke for nearly thirty minutes The auditorium was packed All the judges of the court were present I spoke on the Indian Constitution and explained how the higher judiciary in India struck down laws or executive orders if they were found to be illegal and unconstitutional I also described to them the other broad features of the Constitution including the guaranteed fundamental rights along with the Directive Principles of State Policy I emphasised that fundamental rights guaranteed included *inter alia* the right to property, the right to equality before law, freedom of religion, freedom of speech and expression, the right to assemble peacefully and without arms, to form associations or unions

I added that the Directive Principles of State Policy, though not judicially enforceable, were nevertheless fundamental in the governance of the State, and it was provided that it shall be the duty of the State to apply these principles in making laws Shortly stated, these Directive Principles enunciated the broad features of the Indian philosophy of a socialistic State which it proposed to build on a democratic and secular foundation in our country I also made the point that if any law or executive order contravened the fundamental rights and the courts were satisfied that the contravention was not justified by any provisions of the Constitution the courts struck down the legislative act or executive action I mentioned some other features of the Constitution and concluded my thirty-minute speech Then began the period of questioning, and the first question which was thrown at me by several members was "What do you mean by saying that the executive action or a legislative act is struck down?"

Before proceeding to answer the question I said 'Ladies and gentlemen, I have been working as judge

for the last twenty years During this period I have developed the habit of putting questions to the members of the Bar and have lost my capacity to answer questions However, courtesy requires that since you have assembled here in such a large number and heard me so patiently and applauded my speech, I owe it to myself and to you to make an humble effort to answer such questions as you may like to raise Let me then turn to the first question' My answer was then given deliberately in strong words I said I mean, an executive order or law which is found to be unconstitutional by the competent court and is struck down, is just dead and has no effect whatever" This reply took their breath away because this was something new to them

Several other questions were asked and I tried to answer them to the best of my ability and I thought they were satisfied They asked me if I belonged to any political party I said "No Judges do not belong to any party In fact, it is one of the unwritten laws of the country that a judge shall not take part in political life so long as he is a judge" I understood Gorokin was a member of the Politbureau I said that if I were to belong to the ruling party, how can the Opposition party have confidence in my impartiality? The basic difference between the two systems is that Indian democracy is multiparty One party may be in power in one State and another party in another State, and a third party in power at the Centre Judges must be aloof from all political parties and must confine themselves honestly, fearlessly, freely and independently to discharging their functions In the USSR there is only one party and so the complication created by the existence of a multiplicity of parties does not arise

I emphasised the fact that fundamental rights were the crux of the Indian Constitution and I read out to them

the Preamble which gives very briefly the dream which inspired the fathers of our Constitution in drafting the different provisions of the Constitution, and very briefly and eloquently describes the ideal of the Indian Constitution and provides the key to its material provisions Having read the Preamble, I asked the audience 'Can there be an ideal for the good of common men nobler than the one specified very briefly, succinctly but effectively in the Preamble?'

As soon as I sat down, my colleagues, who were very much satisfied with my performance, congratulated me and the audience gave me an ovation

After finishing my speech, I turned to Gorokin and asked Will you publish my speech in the Russian papers?' And he replied, "Your speech will be translated and published in the most prestigious law journal of the USSR" And true to his word, my speech was translated *verbatim* and published

Some facts which we noticed ought to be mentioned Women are engaged in all occupations in the USSR There are women engineers, women lawyers, women doctors and so on At Leningrad, I developed a sore throat and my colleagues were worried that my announced programme of speaking at Moscow in the auditorium of the Supreme Court might have to be dropped A lady doctor came and examined me thoroughly and within two days cured me of the hoarseness of my voice She was very efficient, very polite and sympathetic and was very popular in the profession she practised On the road you see women working along with men in the very arduous task of building roads There is no profession in which women are not allowed to work and though there were some murmurs of dissent with regard to the over-regimentation of personal life, by and large, we got the impression that the people were satisfied with the

remarkable progress they had made But it is necessary to utter a word of caution Our tour was a guided tour, we met people whom Gorokin chose and we saw the institutions selected for us by Gorokin Even so, Moscow presented the appearance of a prosperous city

The visit to the Moscow University was the most surprising event in our tour We found a magnificent campus with different faculties Our talks with the deans of the different faculties satisfied us that so far as the educational sphere was concerned, the State did not interfere with the work of the Universities The State wants that the nation should make rapid progress in all branches of education and secure the first place in the comity of nations, and what has actually been achieved cannot be said to be unworthy of the ideal Medical friends, who had visited the USSR, told us that medical research and medical work carried on in that country was far ahead of that in many countries in Europe and it was almost equal in excellence to that of the United States We did not know how our fifteen days passed and when the time to leave Moscow arrived, we felt a little pang Gorokin and his colleagues had come to see us off at the airport Before we boarded the plane at Moscow, we shook hands with our hosts, Shalini leading the way When she shook hands with Gorokin, she spoke three sentences in Russian as though she knew the Russian language These sentences she had learnt from Mr Oak, our translator in the Indian Embassy They meant 'Farewell, dear friends We are grateful to you for your kindness and your hospitality Convey our grateful thanks to the citizens of the USSR for the interest they took in our visit God willing, we may meet again some time, Goodbye Gorokin was apparently taken by surprise and so were his friends We then followed her, shook hands with all of them and boarded the plane for New Delhi

(4) AUSTRALIA — COMMONWEALTH LAWYERS' CONFERENCE 1965

After a few months work at the court, I had again to go out of India as the Leader of the Indian Delegation to the Commonwealth Lawyers Conference at Sydney (Australia) Ashok Sen, Union Law Minister, was the Deputy Leader Desai, Registrar of the Supreme Court, was the Secretary, and Shah, Joint Secretary of the Law Ministry, was the other Secretary of the Delegation Members of the Delegation were, besides myself and Ashok Sen, Motilal Setalvad and Daftary Some other Indian delegates also attended on their own Among them was Justice Bhagawati, then of the Gujarat High Court

We left Bombay via Madras and reached Sydney at night We were lodged in a magnificent hotel We had to go to the ground floor where tables were laid both with vegetarian and non-vegetarian food, plenty of good fruits and all kinds of delicious ice-cream

The programme of the Conference was that the Chief Justices should put on their robes and, on their way to the Conference Hall, visit the Church and after prayer proceed further I decided not to join this part of the programme, because I am not a religious man in the orthodox sense and, besides, I did not think that it would be proper for us to go to the Church before attending a purely secular Conference Bhagawati consulted me and I told him that I did not propose to join He agreed and did not join The result was that a few minutes before the Conference I was the only Chief Justice seated in the chair on the dais, because the other Chief Justices had gone in procession to the Church and were yet to arrive Next day, a daily paper in Sydney noticed this fact and praised me for not having gone to the Church

The Conference began with a speech from Prime Minister Meckenzie of Australia welcoming the Chief Justices and the other delegates, and then the Chief Justices delivered their own speeches All of them read their speeches, Lord Gardiner, Lord Chancellor of England, leading the way When my turn came, I spoke extempore as usual, and naturally the audience applauded me The speech had to be made for five to ten minutes and, during the short period, I put forth the basic concepts of Indian political philosophy as embodied in the Indian Constitution

After this preliminary session was over, Prime Minister Meckenzie came to me, shook hands with me and said to me . "I remember your very eloquent speech at Westminster Hall Today you made a similar performance Congratulations"

Then we split up into committees and the committees discussed several problems, at the last session the reports made by the committees were read and appropriate resolutions were passed Only one significant event needs to be reported I had already stated in describing my visit to London that Lord Gardiner and the Prime Minister of England had broached with me the subject of a Commonwealth Court of Appeal In fact, Lord Gardiner was so keen on the idea that he had come with a contingent of English delegates On the first day after the opening, the Section of the Conference met to consider this proposal Lord Gardiner opened the proceedings and made a very sweet, reasonable and persuasive speech emphasising the merits of the plan of a Commonwealth Court of Appeal As the meeting could not last very long, each speaker was given five to ten minutes Almost all of the African Chief Justices supported Gardiner When my turn to speak came, I was introduced as the Chief Justice of India I

put my vehement opposition to the proposal in clear, firm and emphatic terms and I finished my speech within the allotted time The majority of the delegates were glum and not happy As soon as I descended from the platform, Motilal shook my hands and said Well done, you have given a befitting and eloquent reply to Lord Gardiner s special plea" After my speech was over, the Chief Justice of Pakistan was invited to speak and he was good enough to say that, after hearing the well-reasoned and eloquent speech of the Chief Justice of India, he agreed with him in every particular and he was also opposed to the idea This was somewhat surprising having regard to the usual attitude which Pakistan adopts in international conferences As soon as he came down from the platform, I shook his hands and said, Thank you When the sense of the house was ascertained, Lord Gardiner found that his idea did not appear to be acceptable to the majority of the delegates and so it was given a decent burial

When the Conference was over, Prime Minister Meckenzie gave a dinner to all delegates He was standing at the entrance to welcome every invitee Shalini and I approached the entrance The Prime Minister shook my hands and said Thank you, we are also against the idea of a Commonwealth Court of Appeal, but as the host country, neither our Chief Justice nor I could take a positive stand on this issue Therefore our thanks are due to you for expressing our feelings so well"

Sydney is a wonderful place, beautifully planned, and with well-to-do citizens Almost every family seems to have two cars They know how to work hard during five days in the week and how to relax and enjoy Saturday and Sunday On these two days, you will find all the sea-coast occupied by citizens enjoying themselves in the pleasantly warm sun, taking their lunch, or swimming in the

sea or playing many games One Saturday, Shalini and I also went to a sea resort some distance off Sydney The hotel where we went to spend the day had been deliberately built in the style of a cottage in the form of a ship We were served good food, we sat under the sun in the afternoon when we took tea and returned home in the evening It was a very pleasant day

After the Conference at Sydney was over, we went to Canberra where a Conference of the Chief Justices alone had been organised Canberra is essentially a government city It is occupied by government employees and, unlike Sydney, is not a big city either The Conference lasted two days It was more or less a formal matter intended to give the Chief Justices, who had attended the Conference, an opportunity to see the capital of Australia

At Sydney there was a television debate in which India participated The Solicitor-General of England, the Chief Justice of Pakistan, the leader of the Bar at Sydney and some others had joined Questions and cross-questions were asked mainly centring on the idea of the Commonwealth Court of Appeal I stood firm by my stand and the Pakistan Chief Justice also stood by me This interview was later shown on the television and we ourselves saw it in our room in the hotel It came off very well

After I returned from Australia, I was to have gone to Japan for the Conference of the Chief Justices of Asia But just about that time, war broke out between Pakistan and India Prime Minister Shastriji said that I need not cancel my visit to Japan to participate in the Conference, but somehow I did not like the idea of attending an international conference when my country was at war So, I wrote to the Chief Justice of Japan pleading my inability to attend

(5) EAST AFRICA—KENYA

Since I am describing my tours abroad, I might as well include in this chapter my visit to Kenya, which took place when I was Vice-Chancellor of Bombay University

One day in 1967, I received a letter from Mr Porter of the University College of Nairobi inviting me to deliver the First Gandhi Memorial Lecture under the auspices of his University I also got a letter from Mr Prem Bhatia, our Ambassador in Kenya, urging that I should not say 'No My name was apparently suggested to Mr Porter by Prem Bhatia in consultation with the Government of India I wrote to Mr Porter that I would be delighted to visit East Africa and deliver the lectures and I informed him that my subject would be "Constitution of India—Its philosophy and basic postulates In the introduction to the lectures, which have been printed by Oxford University Press, Nairobi, I have said 'I realise that I do not adequately deserve the epithet of scholar, nevertheless when Porter offered the invitation to me, I did not hesitate notwithstanding the fact that I was fully conscious of my inadequacy to discharge the obligations of the responsibility involved in delivering the first address in honour of Gandhiji, arranged by the University of Nairobi"

The lectures were organised in a big hall and all the three lectures were well attended Though my lectures were written down and the typed manuscript was handed over to Mr Porter, as usual I spoke extempore and that delighted the audience very much Since I was quite familiar with the subject of my lecture, it was easy for me to convey my ideas to the audience in simple and clear terms I tried to compare the provisions of the Constitution of India with those of Kenya's Constitution, and in one lecture I spoke on the story of Kenya s independence and described the broad features of the Constitution

The Indian community in Nairobi was rather excited at my arrival and organised some functions in my honour One big dinner was organised, and on my insistence they invited not only the Indian citizens but also some important Kenyans to the dinner At the dinner again I made a speech and appealed to the Kenyans and Indians to live together as brothers To Indian citizens, I said You do your duty by your country and though you must not forget India and your obligations to her, you must all the time remember that your primary duty is to Kenya '

Kenya is a remarkable country The hotel where we were staying was magnificent On Sundays, they arrange a lunch which is extraordinarily attractive, because many Indians settled down in Kenya are Gujaratis, we get table after table laid with vegetarian dishes of all kinds and plates full of ice-cream of indescribable deliciousness and of different kinds Lunch on Sunday is an event in Nairobi

One big attraction of Nairobi is a vast park where live all kinds of animals—tigers, elephants, deers, jackals, lions, wolves, and that indeed is the main attraction of the town for the tourist It is a prestigious and magnificent show-piece and naturally Kenya derives substantial income by charging heavy fees for entry into the park Nevertheless, you are tempted to see the park again and again and enjoy the pleasure which is really indescribable We moved through the park twice and, on both the occasions, in a car On our first visit, we did not see any lions or tigers at all We went to the park again We despaired of seeing the lions One wheel of the car was punctured and we had to get down As we were standing on the road while the punctured wheel was being repaired, the forest guard came to us and said "Sir, have you

seen lions?' I said 'No, we unfortunately could not go in that direction' 'Take your car,' he said, and you will see a large number of lions And true enough, when the wheel was repaired and we went in that direction, there was a large number of lions, One sight which I will never forget was of a big lion sitting on one rock and on the opposite side the lioness, his wife she was, we were told, and four little cubs sitting in between They are so much used to visitors to the area that they just do not bother about people coming and going In one place when our car stopped, a lion cub came near the car, but made no mischief at all Just as we were anxious to see the lion, the cub was anxious to see us Hundreds of animals were jumping about in joy

When we were passing along, we found some Americans taking photographs We went near and found a lion had killed a pretty deer and was busy devouring it methodically from the legs to the throat The lion's face in consequence was literally full of blood He would bite a portion of the deer's carcass with his mouth red with blood, would look up to the American's camera and almost seemed to say 'take my photograph This procedure went on for quite some time It was a terrible sight for us, vegetarian Hindus, but the Americans enjoyed it They took several photographs

A lawyer friend took us to the park one day We went round and round, but we found no animals It became dark and the lawyer, though he was familiar with the park area, seemed to have lost his way and we did not know what to do By chance, a car came and its occupants showed us the way

I addressed the Nairobi lawyers who had organised a lunch in my honour and I spoke on the Indian Constitution and the ideal of the welfare State to which India was

committed I said that, though there were several features common between the two constitutions, the Chief Justice of Kenya, whom I had met, told me that not one application had been received in court challenging the validity of any executive action or legislative act He was an Englishman and I talked to him freely I said Chief Justice, these provisions of the constitution relating to fundamental rights read attractive! Are they enforced? And he replied 'Show me a lawyer who will file a *writ* petition, and slyly added, and a judge who will decide against the government I was then satisfied that one of the Indian judges, who was good enough to correct me so far as the Kenyan constitution was concerned, was right when he said that these were paper provisions and nobody would be able to enforce them

The programme of the lectures was that they had to be delivered in two phases, one in Nairobi and the other in Dar-es-Salaam which is the capital of Tanzania So we went to Tanzania to deliver the lectures once again Fortunately, a Gujarati friend Chande, who heard that Shalini and I were visiting Dar-es-Salaam to deliver the lectures, offered to take us to his house and gave us very kind hospitality In fact, the Indian Ambassador and Mr Chande were good enough to come to the airport to receive us Chande is a big industrialist of Dar es-Salaam Our host and his wife were very cordial They treated us as members of their family In their house was a parrot which spoke a few sentences frequently during the day It was a source of very great amusement for us In Dar-es-Salaam I delivered the lectures and they were well received

From Dar-es-Salaam we came back to Nairobi and turned to Kampala just for sightseeing Kampala is God s good city, wonderfully planned, with trees lining both sides of the roads from the airport to the town and the hills

surrounding the city Mr Mehta, who owns considerable estate in Kampala, had been generous enough to let us stay in his guest house in Kampala We were looked after very well here One remarkable feature of this part of the country was that a major part of the properties belonged to Indians and that is why many East Africans are jealous and sometimes indignant

In Tanzania, President Nyerere, who is a progressive ruler, told his colleagues to advise the lawyers to hear my speech and so a programme was arranged and I spoke on the philosophy of the Indian Constitution They put several questions and appeared to be satisfied with my answers

On the whole my visit to East Africa was very successful, and a day before I left, the Indian community organised a lecture on Hindu philosophy It was well attended and well received Prem Bhatia, our ambassador, was very kind to me throughout my stay He presided over this lecture and said 'The distinguished visitor has made such a favourable and permanent impact on the three countries of East Africa that the fortnight of his stay will be remembered as the Gajendragadkar fortnight' I was more than satisfied with a compliment made by a person of the status of Prem Bhatia, our ambassador in East Africa, who was also a journalist of repute He invited us for a meal, gave us extremely good food and was good enough to come to the airport at Nairobi to see us off I wish to put on record my thankfulness for all that Prem Bhatia and his wife did for us So we boarded the plane back to Bombay and the Bombay University

Chapter 17

NATIONAL COMMISSION ON LABOUR

By the time I settled down in Bombay as Vice-Chancellor of the Bombay University, I had no idea that I would have to go to Delhi again However, man proposes and God disposes Some time after I took charge as Vice-Chancellor I was invited by the Government of India to be a Member of the University Grants Commission As such I had to go to Delhi frequently and always stayed at the Indian International Centre That is a quiet place, very attractive and absolutely suitable for intellectual work Dr C D Deshmukh, the Chairman of the Committee of the Centre, was kind enough to allow me to use the Presidential room whenever I went there in case he was not in Delhi If he was in Delhi, the room adjoining his was allotted to me

When I had gone to Delhi to attend one of the meetings of the University Grants Commission, at night I got a telephone call from Jagjivan Ram, who was then Minister in charge of Labour Jagjivan Ram, in his very sweet and polite manner, mentioned to me that he had a request to make He asked that I should agree to be the Chairman of the National Commission on Labour, which he wanted to constitute Since the Whitley Commission had made its Report many years earlier, the problems of labour and its relations with industry and their mutual contribution to national prosperity had not been considered by any high-power Commission and since I had delivered many judgments in industrial disputes and was regarded as a leading figure in industrial jurisprudence in India, Jagjivan Ram was very keen that I acceded to his request He said ' I am very keen that this Commission, which is very important from my

point of view and from the point of view of the nation, should be presided over by you Whatever terms and conditions you like in regard to your acceptance of the request will be complied with The terms of reference and the members of the Commission would be settled in consultation with you" I was taken by surprise because I knew that this job would keep me busy for about a year or more However, since the subject was dear to my heart and the request was made personally by Jagjivan Ram, whom I held in high esteem, the next day I got in touch with him and said Yes, I feel honoured by the request you have made and I shall accept the Chairmanship of the Commission" Then the Secretary of his Ministry got in touch with me and the names of the members were decided and the terms and conditions of my engagement were fixed I insisted that my headquarters should be in Bombay because Bombay University was my first love Government agreed The office of the Commission would be in Delhi and meetings would be held in Delhi which I would attend. The days for the meetings naturally would be fixed by me so that my work as Vice-Chancellor would not be interrupted or disturbed

The Members of the Commission were Bharat Ram, D C Kothari, P R Ramakrishnan, Naval Tata, Baljit Singh, B C Ganguli, R K Malaviya, Raja Ram Shastri, Ramananda Das, Manohar Kotwal, G Ramanujam, S R Vasavada and B N Datar The terms of reference were very wide I insisted that Mr Datar, who was to be the Secretary of the Commission, should have the status of a Joint Secretary to the Government of India That was necessary because not only Mr Datar was an extremely competent officer in regard to labour matters but also, having regard to the status of the Commission, its Secretary had to enjoy the status of a Joint Secretary to the Government This was also agreed to All this was decided between me and the

Secretary of the Labour Ministry and I returned to Bombay, expecting the announcement of the Commission to be made any day

Meanwhile I got a telephone call from Mr Asok Mehta in Delhi informing me that the Prime Minister very much desired that I should be the Chairman of a Commission which he wanted to appoint to settle the dispute about dearness allowance between the Government and its employees I told Mr Mehta that I had already accepted one heavy responsibility and I did not want to be burdened with another Commission Mr Mehta said, 'We will look into the matter and you will soon hear from the Prime Minister "

As anticipated by me, Jagjivan Ram rang me up soon after I received Mehta's call and said that he would postpone the appointment of the Labour Commission until the Dearness Allowance Commission had finished its work and he wanted me to accept the Prime Minister's invitation to head that Commission In regard to this Commission also, the terms of reference and the terms of my appointment were settled in consultation with me My colleagues were Dr B N Ganguli, the famous economist who was then Vice-Chancellor of Delhi University, Mr B Venkatappayya and Mr T R S Murthy (Secretary)

The terms of reference of this Commission required it to examine the question of adjustment in dearness allowance of the Central Government employees who showed great dissatisfaction with the then rise in prices following perhaps the devaluation of the Rupee in June 1966 One of my erstwhile colleagues on the Supreme Court, Mr Justice S K Das, had already worked as a One-Man-Commission to lay down the scale of dearness allowance consequent on the increase in consumer prices as affecting the employees He had assumed that the price rise would not go beyond

a certain level and had made his recommendations on that assumption Our task was to study the whole issue afresh and to devise a scale of allowances which could be considered equitable by all concerned In this task I had the fullest co-operation, which I greatly valued, of my colleagues on the Commission, Dr B N Ganguli and Mr Venkatappayya who was the Finance Secretary to the Maharashtra Government before he retired All of us felt that for technical assistance we should have as advisers, though on a part-time basis, one economist and another a person who had acquired experience in the field of labour Our choice naturally fell respectively on Dr Ashok Mitra, the present Finance and Planning Minister of West Bengal, who was then the Chairman of the Agricultural Prices Commission, and Mr B N Datar, my brother-in-law who had a good standing in the field of Labour for about twenty-five years and who was holding at that time a joint charge as Labour Adviser in the Planning Commission and Planning Adviser to the Ministry of Labour and Employment

As this task was on its way to completion, Mr Jagjivan Ram renewed his request that I should head the National Commission on Labour and reminding me that all the terms and conditions had already been settled and that since I would soon be free from the Dearness Allowance Commission, he would announce the appointment of the National Commission on Labour I agreed By its terms of reference, which were very wide and extensive, it was expected *inter alia* to (1) review the changes in conditions of labour since Independence and to report on existing conditions of Labour, and (2) review the existing legislative and other provisions intended to protect the interests of Labour, to assess their working and to advise how far these provisions served to implement the Directive Principles of State Policy in the Constitution on labour matters and the national objectives

of establishing a socialist society and achieving planned economic development As has always been his style Jagjivan Ram had already sounded the senior trade union leadership and leaders of industry in the country and everyone had agreed that a review of the type the Minister had contemplated was essential in order that the labour policy of the future would have a new look on the basis of the experience already accumulated and the needs of the future

Again as a piece of good selection, the Minister had chosen Mr B N Datar to the post of Member-Secretary of the proposed Commission before formally approaching me to take on the responsibility as its Chairman The proposed Commission's work, I thought, would be the culmination of my association with Labour Law, which had begun in a serious way about twelve years ago with my appointment as Chairman of the Bank Commission after the sad and untimely demise of my colleague on the Bombay High Court, the late Mr Justice G S Rajadhyaksha After I went to the Supreme Court I had to deal with labour law in a major way along with my colleagues, Mr Justice Wanchoo and Mr Justice Das Gupta

The Commission had on it several interesting personalities We had for about two years Mr S A Dange who does not need any introduction to the Indian public For reasons which we considered were not quite connected with the work of the Commission he resigned his membership after some time The other well-known names have already been mentioned Mr Naval Tata of the distinguished house of Tatas, the well-known industrialist of New Delhi, Dr Bharat Ram

The then inseparables, the late Mr Vasavada and Mr Ramanujam of the Indian National Trade Union Congress, were the labour representatives Mr Vasavada had

appeared before me and my colleagues of the Supreme Court to argue cases in which trade unions were parties Though no lawyer by profession, his way of arguments on behalf of labour was always enjoyable Without any theatricals but always with his feet firmly on the ground, he was very accurate about his facts and the points he wanted to make Naturally all of us appreciated this layman's advocacy He used to be a match for many of the seasoned advocates of the Supreme Court Since several of us on the Bench did not need the finer points of law explained to us in labour matters, we received a great deal of general guidance, *albeit* extra-judicial, for our decisions through his arguments

We had the association of eminent economists like the late Dr Ganguli and the late Dr Baljit Singh Wherever we went we were warmly received right down from the Chief Ministers like the late Mr C N Annadurai, the late Mr Vasantrao Naik and Mr Mohanlal Sukhadia, to the senior officials in Governments, Centre or State, and equally influential representatives in the employers' and workers organisations Thanks to the co-operation from all members, our discussions with the persons who appeared before us went right on schedule, without any incident which could have arisen particularly when examining trade union leaders of different persuasions and employers with very traditional notions about their prerogatives as investors of capital There was as much sense of harmony between the Commission and the witnesses as within the Commission itself among the various sectional interests In a way evidence was not wanting about each one wanting to know the other's point of view

Much of this smooth sailing with regard to the work of the Commission was possible because of the way the

work was organised within the Commission s Secretariat under the leadership of the Member-Secretary, Mr Datar A part of what we wrote about him in the Commission's Report is worth reproducing We could turn to his experience with confidence for information on Labour and allied issues in our country or abroad In him we had a person with deep commitment to the cause of Labour His added advantage has been that he knows several leading individuals in the field of our enquiry on a personal level Our terms of reference are very comprehensive and the area covered was very wide We feel that without his energy, initiative, zeal and ceaseless industry and unstinted co-operation, we would not have been able to complete our work in its present form in good time'

As a hindsight I may say that he seems to have enjoyed this recorded reputation even in the Asian region in which he worked for the International Labour Organisation, and retired after a five-year stint, at least judging from the frequent calls he receives even after retirement from the Organisation for undertaking one task or the other in Asia and the Pacific on behalf of the ILO

A word about the way the Commission s work was organised Recognising at a very early stage in its work that the vast amount of information needed for analysis could not be collected without establishing focal points in each State and in important employers and workers organisations, the Commission sought the collaboration through me of the Labour Ministers and the heads of the respective organisations to establish such focal points For each important industry small tripartite study/working groups were established with one economist/sociologist added to provide another dimension to the work of such groups We got together in small conferences

the heads of State Statistical Bureau and Labour Commissioners, arranged seminars for the factory/mines inspectorates, established rapport with leading thinkers on rural employment and wage problems and got analysed whatever data available on variety of topics of interest to the Commission What is more, all the reports on industries, topics, conference/seminar conclusions and even statistical volumes were printed and published with a view to getting public reaction on the various issues/ data contained in them about six months before the Commission was due to complete its deliberations All this was done along side the regular work of any Commission of analysing memoranda received from persons wanting to be heard, for briefing members well in time for their meeting with the persons concerned Even when the Member-Secretary went abroad for discussions, he would send his understanding about the issues to be discussed sufficiently in advance for the respondents to keep information ready for him The anticipation which the Secretariat showed in this respect was very favourably commented upon by persons with whom discussions were arranged outside India Recognising also that, for the Report to make an impact on the public, Government should have an adequate number of copies of the Report as printed available immediately on release, the Secretariat had printed Reports for us to sign This, I believe, is something rare for any such Commission

Having paid this well-deserved tribute to the contribution made by the Member-Secretary, Mr Datar, I thought I would not be fair to myself if I did not add that the proceedings of the Commission were not stormy because as a judge I had ample experience to guide and control them properly My experience came to my rescue on many occasions when the debates tended to be unduly excited When the Commission s work started,

on the first day Jagjivan Babu had sent his Secretary to Bombay to welcome us formally as Members of the Commission and he made a speech on behalf of the Government I remember that in reply I stated that though the work of the Commission was extremely difficult and complex and full of points where there would be confrontation between different sets of members, there were two factors in favour of the smooth working of the Commission One was the presence of economists who were not committed one way or the other and the other, if I might say so without immodesty, was the presence of the Chairman who was quite familiar with the manner in which tortuous debates and angry arguments could be controlled When the Commission work was over, all members were generous enough to agree that the work of the Commission had gone on smoothly, primarily because I was conducting the proceedings in a judicial manner

We had to travel throughout the country to record evidence and the reports of the Commission were not always submitted within the period originally prescribed It was partly because of the fact that while the work of the Commission was proceeding apace, elections took place and non-Congress Governments came into power in a number of States and they wanted time to study the problems in order to be able to present their cases properly Their request, it appeared to me, was sensible, so with the concurrence of my colleagues we agreed to postpone our visits to those States by a few months That was why the submission of the Commission s Report was delayed

I have no intention of going here into the details of the recommendations we made and the conclusions we reached Suffice it to say that on what had happened

in the field of labour since Independence or rather since the Whitely Commission pronounced on the subject in the early thirties, there was complete agreement among members Taking a view on the conditions of labour in so far as its remuneration went, by applying a variety of tests, we came to the conclusion that labour had not been able to make advances in any significant manner except in isolated pockets and there too the reason for advancement was the initial low level of real earnings which was their lot In some cases, the situation had worsened This surprised many an observer of the labour scene but facts at times turn out to be more unpalatable than one fears them to be There were of course distinct advances in terms of health insurance, social security etc, but all in all labour cost items in the total cost of production had not gone up Real wages had not improved in spite of improvement in productivity even allowing for the cost of more efficient machinery being used in the production processes

Before proceeding further, it would not be inappropriate to indicate what the approach of the Commission was in dealing with this complicated problem This is what the Commission observed

"Quest for Industrial Harmony

6 34 In the first section of this Chapter we have indicated our approach in the light of item (2) of our terms of reference In this part we propose to set out our approach in the light of items (1), (3) and (4) of the said terms By (1) we are required to review the changes in conditions of labour since Independence and to report on existing conditions of labour The third term of reference requires us to study and report in particular on seven topics set out in clauses (i) to (vii) thereof and item (4) requires us to make recommendations on matters connected

with our inquiry Our approach throughout has to be inspired by a quest for industrial harmony

6 35 "Peace in Industry said the First Five Year Plan, "has a great significance as a force for world peace if we consider the wider implications of the question The answer to class antagonisms and world conflicts will arrive soon if we succeed in discovering a sound basis for human relations in industry Economic progress is also bound up with industrial peace Industrial relations are, therefore, not a matter between employers and employees alone but a vital concern of the community which may be expressed in measures for the protection of its large interests

6 36 "Industrial Peace and 'Industrial Harmony" have the same meaning, but we are inclined to think that the concept of industrial peace is somewhat negative and restrictive It emphasises absence of strife and struggle The concept of industrial harmony is positive and comprehensive and it postulates the existence of understanding, co-operation and a sense of partnership between the employers and the employees That is why we prefer to describe our approach as one in quest of industrial harmony

6 37 A quest for industrial harmony is indispensable when a country plans to make economic progress It may sound platitudinous but it is nevertheless true that no nation can hope to survive in the modern technological age, much less become strong, great and prosperous, unless it is wedded to industrial development and technological advance Economic progress is bound up with industrial harmony for the simple reason that industrial harmony inevitably leads to more co-operation between employers and employees, which results in more productivity and thereby contributes to all-round prosperity of the country

Healthy industrial relations, on which industrial harmony is founded, cannot therefore be regarded as a matter in which only the employers and employees are concerned, it is of vital significance to the community as a whole That is how the concept of industrial harmony involves the co-operation not only of the employers and the employees but also of the community at large This co-operation stipulates that employees and employers recognise that though they are fully justified in safeguarding their respective rights and interests, they must also bear in mind the interests of the community In other words, both employers and employees should recognise that as citizens they ought not to forget the interests of the community If this be the true scope of the concept of industrial harmony, it follows that industrial harmony should and ought to emphasise the importance of raising productivity, because the resulting accelerated rate of growth will lead to the good of the community as a whole That, we consider, is the true significance of the doctrine of industrial harmony in its three-dimensional aspect

As regards our main recommendations for the future, we were all agreed that Government s influence in the settlement of disputes should not be all-pervasive as it was till the writing of our recommendations and for that matter as it is even upto now This was to be achieved through direct access by parties to the National or State Industrial Relations Commission to be appointed in consultation with the highest judicial authority concerned and the Chairmen of the relevant Public Service Commissions While political factors may not have influenced the decisions, it was not all that obvious in the public mind And taking the well-known maxim that justice need not only to be done but should appear to have been done, we recommended machinery to secure insulation from the political influence of the Government in power We had, at the time of

writing the report, Governments of various shades in different States The other recommendation was, and there was no unanimity on this, to adopt a procedure to judge the representative character of a union, a controversy which, according to my later close association with the International Labour Organisation as a Member of the Committee of Experts on the Application of Conventions and Recommendations, was peculiar to some of the developing countries in Asia We were to a large extent influenced by the systems in some of the Commonwealth countries in making those recommendations in our Report and from all comments which appeared on our Report, there seemed to be a general public support for them

While all this was satisfactory, I cannot say the same thing about the way the Government treated the main recommendations of the Report In an area where political passions have been the rule, one could not have expected a unanimous report Even at the time a similar exercise was done about fifty years ago, under the chairmanship of H H Whitley, but in an entirely different political environment, some of the recommendations were not unanimous But lack of unanimity, everyone agreed, was confined to a very sensitive political issue, made much more sensitive because a major trade union organisation was involved The recommendation which in effect sought to take away from the Labour Ministries of the Centre and in the States a part of the patronage they enjoyed irked the Government The surprising part of the situation has been that when this specific issue was discussed during the course of collection of evidence from the parties, there was almost near unanimity on the proposals the Commission put to witnesses who included the Labour Ministers, senior officials of Government, leaders of employers in different regions and trade union leadership of various hues in

different regions as well as independent scholars whose views are generally respected by the public

But when the recommendations were seen in cold print, the support which the Commission s recommendations initially received gradually eroded Almost after nine years of incubation the proposal of establishing a machinery under the same name but mutilated beyond recognition was sought to be introduced in the Industrial Relations Bill, (1978) which also did not receive sympathy from any quarters but for an entirely different set of reasons In this situation, the Bill was still-born Not an unhappy end, one could conclude, perhaps ! Persons interested in discussing labour-management relations will continue to debate what should be done, but as things stand at present, no immediate solution seems to be possible and the debate will continue This is one of the disappointments which, I am sure, several of my colleagues on the Commission will continue to share, though with the situation as seems developing in recent years, it would be unreasonable to expect that even the quick acceptance of the Commission s recommendations and implementation thereof could have substantially improved the labour-management relations scene Again hindsight requires us to recognise that in matters where strong economic and political overtones can be dominant, no solutions are possible and may be the relatively easy ones could ultimately prove to be worse than the disease they were expected to cure

This recommendation has to be read with another which we had unanimously made for avoiding the multiplicity of unions (trade union federations, on this occasion) Realising, on the basis of evidence which the Commission had analysed, that one of the ways which encouraged multiplicity in the Indian context was the recognition which trade union federations receive at the hands of

Government, i e , the federations representation on tripartite bodies, we felt that it would be better to fix a stiff limit for recognising a federation for tripartite meetings Once this is fixed at a high level and federations given adequate notice about the raising of this limit for representation still further, it was felt that every federation would either merge itself with another or otherwise unite with another It would lose its prestige as a national body if it did not work for widening its influence Such raising of the limit, with due notice, would have been a carrot and stick approach for bringing the federations together, but over a period Our disappointment was however that rather than following this recommendation Government went on drifting in its policy, with the result that there are now three times the number of federations, some splinters known on the basis of the streets on which their headquarters have been located Occasionally two federations coming together make news, but splinters being what they are on the political plane, in the labour field also they play the same disruptive role Trade union unification thus remains a dream

Bonus was another contentious issue on which the Commission could secure a unanimous recommendation However, within two years, and even without perhaps giving a serious thought to that part of our Report, the then Labour Minister in his wisdom thought of ' unscrambling the egg ' Adequate arguments exist in the Report for the Government to provide justice to the workers within the scope of its recommendations, but all these were ignored and with what results ! These are now too well-known to be recapitulated Even with a re-examination, which was totally redundant, by a Committee which produced three contradictory sets of conclusions, the issue has remained as sour as it was and has become contentious to such an extent that without a major firm decision on its

part any Government will find it impossible to match the demands of organised workers with the established objectives of economic and social development Though the Commission's recommendation in this regard may have had a conservative look about it, it should be remembered that by its terms of reference the Commission was required to keep in view the objectives of planning in making its suggestions, and this did impose the necessary constraints in its total outlook on sectional interests

Another issue on which we felt keenly at that time was the claim of the sons of the soil' to employment generated in different regions of the country Passions were strong but with contradictory emphasis by the receiving and despatching States We discussed the pros and cons of the issue and, in doing so, we had clearly indicated the logical extension of such claims and warned those Governments which we thought were encouraging such claims about what would follow We had also come to a unanimous recommendation after examining the Constitutional position in this regard but these also seem to have fallen on deaf ears What is now being agitated for with some vigour in different States but with labels to suit each State could have been contained if our recommendation, which partly reflected the then policy of Government, had been vigorously implemented Vigorous implementation however can never be a strong point for a 'soft state a la Gunnar Myrdal

I have no intention to claim that, if some of the important recommendations the Commission had unanimously made had been accepted, everything would be peaceful on the industrial front So many strains are developing, almost from month to month, in the body politic What happens in the labour field can only be a reflection of these It is perhaps natural that one has to go through this phase in the

process of development—political, economic and social No section of the society can say that it is living in a world isolated from everything else Even if strains due to internal causes are reduced to a minimum, there can always be externalities which can upset the apple-cart Commissions can always do some advance thinking for the society and yet in the end may be the recipients of disappointments because the society is not in a position to follow the lead given They are, as it were, caught in a vice where one force presses them to go forward and the other resists the attempt In the circumstances, persons who are entrusted with such tasks should take solace in the wise words of a Committee which recently reported in the United Kingdom on an equally difficult set of issues connected with what is popularly known in global labour circles as Industrial Democracy I refer to the Report of the Committee of Inquiry on Industrial Democracy under the Chairmanship of Lord Bullock which appears to have been shelved Says the Bullock Report in the concluding paragraph

> ' The fears expressed in the nineteenth century in face of proposals to give more people the right to vote did not stop short of the subversion of the constitution and the dissolution of Society Once the franchise was extended, however, the fears were forgotten and the Reform Acts were seen as essential to the country's stability and prosperity We believe that over 100 years later an extension of industrial democracy can produce comparable benefits and that our descendants will look back with as much surprise to the controversy which surrounded it as we do to that which surrounded the extension of the political suffrage in the nineteenth century "

I and my colleagues on the National Commission on Labour are optimistic enough and look forward to the day

when the public itself gets sufficiently educated and demands action on progressive recommendations of any Commission In the meanwhile, one can say, if 'Bullock' can be shelved in the United Kingdom why should an 'Elephant'[1] in India not get the same treatment?

I sometimes wonder if the Report would have received more favourable and effective consideration if Jagjivan Babu had continued to be in charge of Labour after we submitted the Report I have had occasion to talk to him on this subject and my impression was that he was keen on implementing at least the major recommendations made by the Commission I still feel that some of the major recommendations we made should be accepted even today because I am definitely of the opinion that in regard to industrial jurisprudence, one basic principle should be that in the decisions of industrial disputes neither the Government nor the judiciary should have a major part to play The best solution would be to leave to the employers and the employees and adopt the course of establishing a National Labour Court as we have recommended in the Report[2]

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1. Gajendra=Elephant
2 For writing this chapter I have received invaluable assistance from Mr B N Datar

Chapter 18

LAW COMMISSION (1971—1977)

It may be recalled that I have already said that when I left New Delhi in 1966 on retirement as Chief Justice of India, little did I realise that I would ever return to New Delhi But fate meant otherwise I first began to attend the meeting of the University Grants Commission and that meant frequent journeys to New Delhi Then I was in a sense compelled to take up the Dearness Allowance Commission assignment and had subsequently agreed to take up the work of the National Commission on Labour

Before I went to the Supreme Court, I had already acted as a One-Man Commission on behalf of the Government of India in the Bank Award Commission

I think it will not be out of place if I quote one paragraph from that Report to show what attitude and approach a judge should adopt in taking up such Commission work

> "A judge who takes up such an assignment is never likely to overrate his competence to discharge his duties in that connection The decision of industrial disputes in a modern democratic welfare State does not rest merely on arithmetical considerations, nor even solely on considerations of economics As the thesis developed by Mrs Barbara Wooton eloquently indicates, the discovery that the determination of a wage structure in a modern industry involves, to some extent, ethical and social considerations has changed the complexion of industrial adjudication in the present

age[1] In assessing the relative importance and validity of the cases placed before an Industrial Tribunal by the trade or industry and the employees, a judge must inevitably depend upon the technical advice which may be available to him and must patiently weigh the respective arguments which are urged before him Usually he is new to the subject of industrial disputes and must approach his task in the proper scientific spirit of enquiry He may perhaps be able to claim that, by his experience at the Bar and on the Bench, he has been trained to consider problems presented before him by the parties in support of their respective contentions It is obvious that the decisions of an Industrial Tribunal must be informed with wisdom and fairness An attempt must always be made to reach conclusions expeditiously and with a faithful regard, not only to the interests of the contesting parties before the Tribunal, but also to those of the public weal A judge must no doubt be able to respond to what Justice Holmes so aptly described as the felt necessities of the times But, nevertheless, his ultimate decision must not be influenced by any bias even subconsciously, and it must always rest on a logical and dispassionate consideration of the data placed before him All I can say is that I have always tried my best to discharge my duties as the Chairman of the Commission fairly and impartially'

One very pleasant impression I carry and that is the promise which the Labour Minister had made in persuading me to accept this work was kept by him and the Report was accepted by the Government and became Law within a month from its receipt by the Minister It was a very tempestuous matter Passions had risen high but on the

1 The Social Foundation of Wage Policy, Allen & Unwin, 1955

whole the Report was well received and I was the recipient of many congratulatory letters on the new method I had introduced in making such reports

In that connection I would like to quote another paragraph from my Foreword

> "As I sign my report, I feel almost tempted to pray that the final conclusions in this matter, which Government may reach after considering my report and recommendations, should bring to an end the tortuous story of the present dispute and establish in the banking business of this country peace and harmony In the context of today banks and bankmen together owe a duty to the State Indeed in the present hour of glory when the State has embarked upon the adventure of building a socialistic pattern of society in the Union of India, all of us have a duty to perform Banks and bankmen can help the process to a large extent if, in partnership with each other, they play their legitimate part in the fulfilment of the Second Five Year Plan It would, I think, not be unfair to say that in the past banks have worked purely as commercial institutions working primarily for profit In the context of today, however, in their policies and their management, banks will have to allow fair and reasonable scope to consideration of social service and the necessity of affording credit facilities to smaller, rural areas in the country I trust, when Government announce their final decision in this matter, they will authoritatively appeal to banks and bankmen to forget the past and look to the future of the banking business with confidence and in a spirit of genuine partnership The present hour in the progress of our country is of historical importance In this hour, it seems to me that all of us must hear-

ken to the call of duty May I conclude this foreword with the eloquent words of William Morris? Says William Morris 'Take courage and believe that we of this age, in spite of all its torment and disorder, have been born to a wonderful heritage, fashioned on the work of those who have gone before us, and that the day of the organization of man is dawning It is not we who can build up the new social order, the past ages have done most of that work for us, but we can clear our eyes to the signs of the times, and we shall then see that the attainment of a good condition of life is being made possible for us, and that it is our business to stretch out our hands to take it

The Law Commission was a different matter because it had to do with law and so, though not acting as judge, as Chairman I was virtually covering the same ground in another way which I had been doing as a judge for many years In England the Law Commission was established by a statute in 1952 which provides that a sitting judge should be the Chairman of the Commission It is an independent statutory organisation which makes its reports, submits them to the Parliament and asks them to give effect to its recommendations The present Law Commission in England is constituted under the Law Commission Act, 1965 It will be apparent from the provisions of the English statute that the Law Commission is a statutory body and is autonomous, not subordinate to any other authority or Ministry and it functions independently The Commission makes its reports and submits them to the Parliament and in ordinary course the Parliament acts on them I would earnestly appeal to the Union Law Minister to have a look at this Act and model our Commission on similar lines with such changes as he may deem necessary That alone will give statutory character

to the Commission and bestow upon it the necessary autonomy without which it cannot work effectively

Our Law Commission was started in 1955 by an Executive Order and Mr Setalvad was its Chairman I became the Chairman of the Sixth Law Commission and continued as the Chairman of the Seventh Law Commission I do not propose to deal with the reports made by the Law Commission, because they are printed and available However a few important facts may be mentioned

The function of the Law Commission is to study the existing laws, suggest amendment to the same, if found necessary, and make recommendations for enacting new laws The recommendations for the amendment of the existing laws or for the enactment of new laws are made by the Law Commission either *sou motu* or on the request of the Government

During my tenure of two terms, the Law Commission submitted in all thirty-six reports They dealt with matters of public law as well as private law The procedure followed in recommending amendment of law was to formulate a Questionnaire and send it on to the bar associations, the Bar Council of India and the State Bar Councils as well as to other bodies appearing to be interested in the subject-matter of the law under review and call for their opinion by reference to the questions formulated After the opinions were received we called some persons to meet us and discuss the matter with them Owing to lack of funds, we could not undertake journeys to meet witnesses on the spot though we did it in one or two cases Sometimes we split ourselves up into two or three groups to visit different centres and collected evidence which was then got typewritten and provided to all the members of the Commission for discussion When the Commission decided to take up a particular Act for consideration,

it broadly discussed the sections of the Act and requested the Secretary, Mr Bakshi, to prepare a draft outline which would be the working paper On this working paper, questions would be drafted for circulation Thus, the initial work was done by Mr Bakshi in the light of the preliminary discussion by the Commission of the problems involved in the Act in question After the answers were received and witnesses examined, we again discussed the matter and Mr Bakshi recorded briefly the gist of the discussions and our conclusions In the light of our conclusions Mr Bakshi prepared the draft in consultation with the Chairman This draft was circulated to all the members, was studied by them and examined point by point before it was finalised After the draft was finalised and definite conclusions were reached, the report was drafted by Mr Bakshi Thus the drafting of the preliminary report, the framing of the questionnaire, recording of the conclusions of the Commission from day-to-day and the drafting of the final report were all done by Mr Bakshi That is why the Commission conventionally sat only for three hours every day It would have been impossible for Mr Bakshi and his staff to cope with the work and equally impossible for the typing staff to follow up if the Commission were to sit for the whole day

When I left New Delhi, I had indicated in my report on Bakshi that he was such a good lawyer that his proper place would be a seat on the High Court Bench for the remaining period However, to my regret, my hope has not been fulfilled

Let me now briefly indicate the broad recommendations in regard to some of the Acts made in our reports In regard to other Acts, I will merely indicate the Acts and not enter into the recommendations made My object in referring to the different Acts and the recommenda-

tions made in some of them is to indicate that we have dealt with very important matters and regrettably it is the Government s default that they did not implement the recommendations in good time Otherwise some of the problems which they had to face later might not have arisen

Our reports dealt with a variety of subjects In the Forty-fifth Report we suggested radical amendments in the Civil Procedure Code pertaining to Civil Appeals to the Supreme Court on a certificate of fitness In the Forty-sixth Report we dealt with the amendment of the Indian Constitution which Government had then contemplated In the Forty-seventh Report we covered new ground in dealing with trial and punishment of social and economic offences If only Government had taken action on this Report soon after it was submitted, many of the difficulties which we faced later would not have arisen We recommended the setting up of Special Courts from amongst the judges in service, a special procedure and special appeals, and, on the matter of onus of proof, we made a radical change The Forty-eighth Report dealt with some questions in the Code of Criminal Procedure The Forty-ninth Report recommended the inclusion of agricultural income in the total income for the purpose of determining the rate of income-tax under the Income-tax Act, 1961 We made this recommendation at the request of Dr K N Raj, who was then the Chairman of a committee appointed by the Government to consider that problem In the Fiftieth Report we proposed to cover persons connected with public examinations by the definition of Public Servant' in the Indian Penal Code At present University Examiners are not public servants, so that even if they are found to have used corrupt means in certain cases, they cannot be prosecuted under the relevant law dealing with corruption The Fifty-first Report

was, from our point of view, very important because it dealt with the question of compensation for injury caused by automobiles in hit-and-run cases In such cases, the party injured has a legitimate case for compensation though he cannot prove who the offender was because the man who caused the injury had run away In such a case, the State ought to step in and pay the victim suitable compensation This is a matter of great social significance and we expected that the Government would act upon it very quickly The Fifty-second Report dealt with Estate Duty on property acquired after death

The Fifty-third Report was on the question of amending the Pensions Act, 1871 This Act was passed at a time when pensions were regarded as gratuitous payment made by the Crown Now even a law student will tell you that pension is earned by rendering service and cannot be said to be gratuitous On the view that it is gratuitous, this Act prohibited the institution of a suit to recover the payment of pension High Courts have wisely given relief to such pensioners by entertaining *writ* petitions and have said that notwithstanding the provisions of the Pensions Act 1871, *writ* jurisdiction is not affected We suggested to the Government to delete that part of the section which is obsolete and not strictly legal either, and make the true legal position clear But even this clear and small matter was not done It would indeed have been very easy to bring forward legislation deleting the impugned section That is about all I was surprised that such an elementary thing, so obvious and necessary, did not receive the attention of the large body of officers in the Law Ministry and the Minister himself The Fifty-fourth Report considered the Civil Procedure Code and suggested several radical amendments Delays in the disposal of cases are sought to be eliminated by amending several provisions which, in our view,

obstructed the daily progress of litigation and were not at all necessary For instance, we recommended that preliminary appeals against all orders should be dropped, that section 115 should be deleted, and that there should be a scheme of appeals, first and second, and the last to the Supreme Court on certain definite conditions Some of these recommendations have been accepted although, in doing so, it appears that the main purpose of the recommendation has not been served by the way the amendments have been made The Fifty-fifth Report dealt with many points about the rate of interest after decree and interest on costs under sections 34 and 35 of the Code The Fifty-sixth Report suggested the deletion of section 80 of the Code The Fifty-seventh Report dealt with *benami* transactions and recommended that these should no longer be recognised

The Fifty-eighth Report dealt with the structure and jurisdiction of the higher judiciary Apart from the recommendations which we have made in this Report, we have written a chapter suggesting that for the subordinate judges a kind of one year s training should be provided just as it is provided in the case of Administrative Services We emphasised that an All-India Institute should be started for this purpose, that it should function under the direction of a senior, experienced High Court Judge, with the assistance of experienced District Judges and First Class Civil Judges The persons recruited as Civil Judges should at the end of the first year undergo further intensive training in this Institute It was also suggested that training should include three months' attendance in the District Courts to see how trials are conducted There should be debates and seminars and only those who pass the annual examinations should be confirmed We recommended that the language in this Institute should be English for reasons which we have recorded at length

If you want to start an all-India institute and introduce a common measure of efficiency in the subordinate services, the only thing to do is to make English the language of instruction, and we have quoted with approval the Indian Administrative Services Institute which has been functioning for many years We have added that we have made these recommendations on our own in the hope that Government will consider that favourably and give effect to them

In the Fifty-eighth Report we have considered how some of the recommendations made in the main Report would help elimination of delay in the disposal of Civil and Criminal cases, but not one of them has the Government thought of giving effect to In the Fifty-ninth Report we dealt with the Hindu Marriage Act, 1955, and the Special Marriage Act, 1954 and suggested many radical changes

The Sixtieth Report is very important It deals with the General Clauses Act, 1897, which called for drastic amendments The Sixty-first Report deals with certain problems connected with the Power of the State to levy a tax on the sale of goods and with the Central Sales Tax Act, 1956 This Report covers controversial ground and, in fact, in the course of this Report, I led the majority and we held that one of my judgments was erroneous, and that as a result of the law laid down by us industrial States are deprived of their legitimate income by levying tax on certain transactions The history of the judicial decisions and a report made by the Setalvad Commission on this subject at the instance of the Government make interesting reading and we had carefully examined the whole literature before we made the majority recommendation

This in brief is the summary of the work done by the Commission during my first term of three years

In the next three years, we took up, to begin with, the Workmen s Compensation Act, 1923 in the Sixty-second Report which was a very important report and proposed some radical changes The Sixty-third Report deals with the Interest Act The Sixty fourth Report dealt with the Suppression of Immoral Traffic in Women and Girls Act, 1956 and suggested some necessary changes The Sixty-fifth Report deals with the Recognition of Foreign Divorces The problem of limping marriages has been considered and what we thought to be a proper solution suggested The Sixty-sixth Report dealt with Married Women s Property Act, 1874 The Sixty-seventh Report dealt with the Indian Stamp Act, 1899 This was a very taxing exercise but we did our best to make the Act of 1899 more rational The Sixty-eighth Report deals with a minor point in the Power of Attorney Act, 1882 and the last two Reports deal with major Acts, namely, the Indian Evidence Act, 1872 and the Transfer of Property Act, 1882 as amended in 1929

I have deliberately included a short summary of the Reports that we made in order to emphasise the point that these Reports are generally not implemented quickly and many of them not at all I also wanted to bring it to the notice of the ordinary citizens what kind of work the Law Commission performs, for unlike the English Law Commission, our Law Commission is purely a creature of an executive order Before we dispersed, we wanted to make a report suggesting major changes in the composition of the Commission, but since a new Government had come into power, we thought that our recommendations would be misunderstood I am now free to mention some of the points on which we were all agreed

It is obvious that for passing laws to meet new situations and problems which arise from time to time and

to amend law which calls for amendment, a body like the Law Commission is absolutely essential, a body which is not committed to any political party and which consists of judges and lawyers who are experts in the matter and who would bring to bear upon the problems purely judicial and impartial mind The power of Parliament to pass laws is not, and cannot be, intended to be challenged but it needs to be supplemented and informed Parliament is very busy in day-to-day debates and discussions and its members do not have the necessary time to consider legal changes to meet new situations and problems in a constructive manner Moreover the attention of the Parliament is not always focussed on the requirements of long-range legislation In order that the Law Commission should be able to serve its purpose effectively, it is absolutely essential to make the Law Commission a constitutional or at least a statutory body At present it is treated as an appendage of the Law Ministry When I was the Chairman, we were consistently treated by the Law Ministry (and the Government) with respect and the Prime Minister took great interest in our work Once or twice I complained to her that I had a feeling that our reports were not only not read but even an acknowledgment of the receipt of our reports took three or four weeks I told her that, if only some of our reports were implemented, many of the problems with which Government had to grapple from day-to-day would have been solved. The problem of antisocial elements would not have assumed such gigantic proportions if only our reports in this area had been implemented The Prime Minister was impressed and she said. 'You are right I do not request you to come here to make reports which will remain on the shelf,' and she passed on my complaint to the Law Minister and asked him to take prompt action on our reports

What do you think was the result? The result was, a Joint Secretary was appointed in charge of the reports we made, in the hope that this would expedite legislation in terms of our reports But the Joint Secretary thought that he was a sort of an authority Without adequate experience or equipment, he took considerable time to consider the merits of the recommendations made in the reports and used to discuss with our Secretary the points which troubled him The Secretary would almost always satisfy him that the points raised by him had been considered and his fears were unjustified In any case the appointment of a Joint Secretary did not serve the intended purpose

Therefore I have definitely come to the conclusion that the Law Commission should receive a much bigger grant and should have a full-fledged library At present the Law Commission s library is very poor not only in Law Reports but also in text-books The result is that we have had to borrow books from the Law Ministry Originally, the Law Commission was housed in a different building which gave it the appearance of an independent body I have never understood what fascination some of the members of the Law Commission felt in moving out of that house and coming over to the huge building where several Ministries are housed including the Law Ministry It must have a building of its own and larger funds to print its reports, to hold seminars on those reports and thus enable the Government to take more action intelligently and quickly on each one of the reports For its secretary, a suitable officer of high status may be loaned to the Law Commission, but during the period that he works with the Law Commission, he would be a part of the Commission and would have no link with the Law Ministry His confidential service record will be written by the Chairman of the Commission and he would have complete control

over the rest of the staff of the Commission He shall have no occasion to look up to the Secretary of the Law Ministry for guidance or for approval of any action that he wanted to take At present every action has to be approved by the Secretary of the Law Ministry and I understand that even a peon cannot be appointed by the Secretary of the Law Commission though the name recommended by him would normally be approved by the Secretary of the Law Ministry

The Reports made by the Law Commission should be forwarded to Parliament and it should be made the duty of the Law Ministry to place the Reports before Parliament within a certain, short specified period Thereafter, without delay, the recommendations made should be carefully considered by the Minister himself, and they must either be accepted or rejected and the result announced in Parliament In any case, the decision of the Minister should be announced and thrown open for discussion in the House If they are accepted, the relevant Bill should be brought forward and the recommendation should become the law of the land after following the due Parliamentary procedure If they are rejected, that is the end of the matter But before rejecting, the Law Minister should meet the members of the Law Commission and discuss the matter with them and explain to them his difficulties If he is satisfied, well and good If he is not satisfied, naturally it is his responsibility to decide whether legislation should be followed in terms of the recommendation or not It should be taken before the Cabinet, and the point of view of the Law Commission explained to the Cabinet as also the objections of the Law Ministry, and then the Cabinet may reach a decision Since the Law Commission is proposed to be a high-power Commission, its recommendations must receive due respect and in any case must be dealt with quickly and expeditiously

I do not know how many Reports still remain on the shelf in the Law Ministry unimplemented and even unread! It is a sad commentary but my experience has shown that it is true That is why some statute must be passed making appropriate provisions which would bind both the Law Commission and the Law Ministry and it will make the Law Commission an independent body and not a creature brought into existence by an Executive Order of the Law Ministry It is true that the Law Minister consults the Prime Minister in nominating members on the Law Commission but even that does not give the Commission the statutory status it deserves If the Commission is given statutory status, it will act on its own in publishing the Reports, in holding seminars in respect of their recommendations, call the Government to send their representatives to attend such seminars, so that the process of law-making can be expedited In modern days problems are arising every day which need immediate legislative solution and this object is intended to be served by the Law Commission

When I left New Delhi at the end of my tenure as Chairman of the Law Commission, I did have the mental satisfaction that I practised law, I administered law and I attempted to suggest to the Government recommendations to amend old and important Acts and suggest to them that they should undertake legislation in regard to matters not covered by any law but which the present conditions required to be covered by law I attempted the task with the full help and co-operation of my colleagues to the best of our abilities and I recall with great pleasure the exciting and all-sided debate which marked the progress of our work in respect of the different Acts Each one brought his point of view and ultimately after full discussion we generally agreed on all issues My recollection is that in the thirty-six reports that we had

submitted, it is only in three or four of them, and that too on one or two points, there has been a note of dissent by one or two members That is why when I left New Delhi, I was disappointed and my hope that before I left New Delhi, I would see most of the Acts on which we made reports would receive the attention of the Goverment and laws would be passed in terms of our recommendations, was not satisfied, but that is human life

When the results of the election of 1977 were announced and it became clear that Morarjibhai would be the Prime Minister, the Commission considered what its attitude should be in view of the totally amazing results of the election Even when the Janata Party members took the oath of loyalty to Gandhi's Ideals near Gandhiji's *Samadhi*, at which Jayaprakash presided, many people had misgivings as to whether the Janata Party, composed as it was of different political parties with disparate philosophies in political, social and economic matters, could function long as a homogeneous party It was hoped that it would, in which case the two-party system would become a reality of our political life and that is absolutely essential for the proper and effective functioning of the Parliamentary form of democracy

So, we asked ourselves in the Law Commission whether it would not be proper on our part to offer to resign since we had been appointed by Indiraji's Government We were unanimous that we should and on behalf of the Commission I went and saw Morarjibhai Morarjibhai said "Why, why should you resign?" I said "The answer is simple There has come about a fundamental change in the Government and it would not be improper if your Government thought that it should appoint its own Law Commission" "You are not a political body," said

Morarjıbhaı I said 'I agree, but ın faırness to ourselves we thought we should avoıd possıble mısunderstandıng and also avoıd embarrassment to you, so we thought we should offer to resıgn and, ın fact, I have come armed wıth the authorıty of my colleagues to tender our resıgnatıons here and now" Morarjıbhaı declıned to accept our resıgnatıons and asked us to contınue wıth our work

We were then revısıng the Transfer of Property Act and that was a very ımportant pıece of work Morarjıbhaı saıd "Fınısh that work and when your term comes to an end, we wıll see what we should do' I told Morarjıbhaı that I had made up my mınd to leave New Delhı fınally, because my heart was set on the Upanıshad Project sponsored by the Bharatıya Vıdya Bhavan

Then he asked me what my vıews were wıth regard to the amendments recently made by Parlıament I saıd "So far as the judıcıary ıs concerned, I dıslıke whole-heartedly all the provısıons made ın amendıng the constıtutıon' When the questıon of amendıng the Constıtutıon has arısen, I had met Indırajı and told her that "the problem of amendıng the Constıtutıon ıs not that sımple All the Opposıtıon leaders are ın jaıl and unless an expert body examınes the problem, poınts out what the dıffıcultıes are, ascertaıns the vıews of all polıtıcal partıes and makes a well-consıdered report, any hasty amendment would be wholly undesırable" Then I made certaın proposals as to how the amendment should be attempted to be made, ıf ıt was necessary to make any amendment at all Though ıt seemed she was ınclıned to accept my proposals, other members who were ın the Cabınet probably dıd not

I have already mentıoned that ıt was strıctly understood between me and Indırajı that no questıon of protocol would stand ın the way of my meetıng her and speakıng to her on current problems concernıng the judıcıary and

the Constitution I met her several times and put in my objections to most of the proposals made in the amendment Not content with merely verbal protests I reduced my views to writing and sent her a letter containing my objections

Morarjibhai said ' Can I have a copy of that letter?" I said "I will consult Indiraji and if she permits, I will give you a copy" I went to see Indiraji "What is wrong if you give the copy of your letter to me and to Morarjibhai ? Your letter contains views which were meant as much for me as they would be for Morarjibhai and his government" Then I sent a copy of my last letter to Indiraji in which I summed up my attitude and complete opposition to every one of the proposals contained in the proposed Amendment Act concerning the judiciary

I have a feeling it was the hawks in the party who put pressure on her to make radical amendments in the Constitution once and for all Some of these hawks used to come and meet me and I made no secret of my view that they were doing incalculable harm to the democratic tradition of the country Swaran Singh who was the Chairman of the Committee appointed by D K Borooah saw me and he generally agreed with my approach Some of the fantastic proposals which were made by some members were dropped at the instance of Swaran Singh But it is all past story and I am referring to these very briefly by way of postscript to show that I was not wholly an idle spectator as a retired Chief Justice of India

One of the proposals brought by the Law Minister was to confer on the Supreme Court supervisory powers over the High Courts and that just took my breath away I had given my opinion to the Prime Minister that if that proposal became part of the Constitution there would be a revolt in the High Courts and the whole legal fraternity would

stand up against it The High Courts are the highest bodies of Judicature in the States and the Supreme Court is merely an Appellate Court It cannot be clothed with supervisory powers That will change the basic feature of federalism in regard to the judiciary at least That proposal however, which was published when it was being discussed in a Committee appointed by Borooah, was ultimately dropped When I left New Delhi on retirement as Chairman of the Law Commission I felt very sorry and said that to some extent I had to remain content as a passive observer of the things that were happening to the judiciary

When I was working as Chairman of the Law Commission, one day, to my surprise, I received a message from President V V Giri whether I would accept the title of *Padma Vibhushan* I then told him respectfully that the title had been offered to me twice before, once at the instance of the Chief Minister of Maharashtra and second time at the instance of the Union Education Minister, Dr V K R V Rao On both the occasions I had declined to accept the honour, because I was keen to live and pass away as an ordinary citizen of this country without any title Then, in a humorous way, Giri asked whether I was refusing *Padma Vibhushan* because I wanted *Bharata Ratna* I said, "Mr President, you know me, my temperament and my outlook on life, but if you misunderstand my attitude and attribute this motive, which I regard as unsympathetic, I will accept this honour of *Padma Vibhushan* at your hands" But I respectfully asked him whether he would permit me not to attend the ceremony "No," he said, Gajendragadkar, I shall be very happy if you come and receive the *Padma Vibhushan* from my hands" Then I replied, "Your request is a command"

However, as chance would have it, on the day on which the ceremony was fixed, I happened to be at Geneva participating in the proceedings of the meeting of the

Committee of Experts of I L O of which I was a Member The result was that, after I left India, my Secretary wrote to the President's Secretary that the Chairman very much regretted his inability to attend the ceremony That is how *Padma Vibhushan* was offered to me I ought to add that, though I accepted the honour, I have personally some doubt as to whether these honours are really consistent with the relevant provisions of the Indian Constitution But that is a different matter When the President earnestly pressed me, I did not think it proper to decline

Next time again, the President's Secretary rang me up and said. "You are firm, I take it, in your acceptance of *Padma Vibhushan,* otherwise Government will announce it and you may decline it" I said. "Please tell the President it would be uncharitable to entertain such an apprehension Once I say yes', however reluctant I may be, I would stand by it '

Before I part with this chapter of my reminiscences about Law Commission I should mention an unhappy interlude that took place in my tenure as the Chairman of the Law Commission, that is my sickness and prolonged hospitalisation at Bombay Since I went to Delhi first in the year 1957 and thereafter in the year 1971, I had always religiously followed the regular habit of morning walks After my return to Delhi in 1971, Shri Rajaram, who was the Court Master in Court Room No 1 over which I had presided as the Chief Justice, was accompanying me on my morning walks Shri Rajaram was so much attached to me that having regard to my age he thought it his duty to take care of me when I went for my morning walks Reference to Rajaram in this autobiography is further justified by the fact that he was a man with clean habits, cultured, well-read and well-informed He is a disciple of Dr Ambedkar and after performing his official duties he devoted his spare time to the spread of

Dr Ambedkar's philosophy On my evening walks my Principal Private Secretary, Kumar, who has served me with great affection and unusual enthusiasm, used to be with me As a result of these regular walks I had maintained very good health This, however, turned out to be more apparent than real because on one of the routine check-ups it was found that I was suffering from aortic aneurism The surgeons in Delhi were of the opinion that immediate attention to the same was necessary and it was also felt that a surgical operation may be required I contacted my daughter, who is attached to the Bombay Hospital She advised me that though the medical centre at Houston in the United States of America was well known for the surgeons and the facilities required for the surgical operation relating to aortic aneurism, Dr T P Kulkarni, who was her classmate and who had also worked in a hospital at Houston, would be competent to attend to me Accordingly I was admitted in the Bombay Hospital on 15th of August 1975 The operation itself was performed on the next day

The operation was totally successful Unfortunately during the post-operative treatment some complications took place which resulted in my prolonged hospitalisation But for the good health which I had maintained as a result of regular habits, both dietary and constitutional, the consequences of the complications might have been serious I was unconscious for several days The devoted nursing of my wife and daughter, the meticulous care taken by the doctor in attendance and the goodwill and affection showered upon me by my other relatives ultimately enabled me to come out of that sickness and to resume my work The operation and the consequent hospitalisation however, left certain disabilities in me I could not take my regular walks as before My intake of food was restricted in several ways Fortunately my mental faculties

remained intact and I was able to continue with my work in the Law Commission When I was coming towards the end of my hospitalisation I had got a feeling that it would be unfair if I continued with the Law Commission where I would not be able to put adequate amount of work My son-in-law, Raghavendra Jahagirdar, got in touch with Law Minister Gokhale and apprised him of my intention to resign from the Law Commission From what transpired later, it appears that Gokhale consulted the Prime Minister and informed Jahagirdar that I should not worry about my absence from the Law Commission and that I was free to resume at any time that I thought fit Gokhale also conveyed the Government s decision not to make any appointment in my place until the term of my office was over till August 1977 There were more than two years to go and fortunately I returned to Delhi to complete the work It would not be out of place to mention that during this time the Prime Minister Indiraji wrote a letter to me which of course I could not read at that time, to take care of my health and asking me to co-operate with the doctors so that I would recover soon and return to Delhi

During my convalescence, while I was slowly regaining my health, S Ramakrishnan dropped in one evening and in his usual affectionate manner told me that my recovery meant that Providence wanted me to do some work and he had a proposal for the same The proposal made by him was editing the Upanishads, a scheme which the Bharatiya Vidya Bhavan had in contemplation for some time He informed me that I would be the General Editor assisted by a team of oriental scholars with such staff that I may require The proposal was tempting, touching upon a subject which was dear to my heart I, therefore, accepted Ramakrishnan's invitation and immediately after my return to Bombay took up that assignment, the details of which I have given in a separate chapter.

Chapter 19

OTHER COMMISSIONS AND COMMITTEES

In this chapter, I wish very briefly to enumerate the other commissions and committees of enquiry which I headed during my judicial career and thereafter During the first twenty-seven years of Indian democracy, one party, the Congress party, was in power The result was, some members of the opposition of renown unduly and very vigorously criticised retired judges taking commission work from the Government of India All kinds of comments were made and it was said that a constitutional bar should be put against retired judges accepting chairmanship of commissions The parties which very vigorously ridiculed the idea of retired judges accepting chairmanship of commissions, when came to power, found that it was essential to appoint a large number of commissions and almost every retired judge of the Supreme Court and some retired judges of the High Courts were requested to head the Commissions of Enquiry Often even in opposition these parties asked for inquiries in several cases by commissions headed by High Court or Supreme Court judges My view has always been that when the Union Government invites a judge of the Supreme Court or of the High Court to head a Commission of Enquiry, it is his duty to accept that invitation Of course it is suggested that retired judges canvas for commission appointments These allegations are easily made I cannot say that it never happens that a judge wants a commission and informs the Ministry concerned that he would like to do some commission work, but in my case I can solemnly and categorically state that in the case of every commission that I

headed, Government had to persuade me to accept the office of Chairman In regard to the Commission on Labour, I readily agreed to be the Chairman Most of the reports made by me were accepted but some were not and I cannot complain It is for the Government ultimately to consider whether the recommendations made by a Commission should be accepted or not The ideal would be that the Minister should keep his word and get the bill passed in terms of the recommendations as it happened in the Bank Commission Award In fact, I was not willing to accept the Chairmanship of that Commission because the vacancy had been caused by the death of my dear friend Justice G S Rajadhyaksha The Minister invited me to the residence of Morarji, who was then the Chief Minister of the Bombay State, because he knew that the Chief Minister and I were friends Morarji said, "It is a call of duty and you must not say no" I replied to him I am prepared to take up the challenging task provided I am assured that my recommendations will be accepted" "Agreed, said the Minister, and within a month after the report was submitted, the bill was introduced in Parliament It is now history, but persons in the banking industry know that this dispute had a chequered career Minister Giri resigned because Finance Minister Deshmukh made certain changes in the Labour Appellate Tribunal s Award After I made my report and the bill was passed in terms of my recommendations, Giri wrote to me a very generous letter saying that he was vindicated

I have made these introductory remarks to make it clear that, despite the view entertained by some public men, I still continue to believe that a call from the Government for heading a commission is a call of duty Lord Denning headed a commission and so also Earl Warren Let me now just indicate the Committees of Enquiry and the

Commissions, which I headed

1 When I was a judge of the Bombay High Court, the Vice-Chancellor of Poona University, Dr M R Jayakar, invited me to head the Enquiry Committee to consider the conduct of the University Registrar My colleagues were Mr Ghate and Principal Karmarkar There were some charges of irregularities against the Registrar We found some charges were frivolous while some serious charges were proved It was a unanimous report and the Registrar resigned

2 Dr R P Paranjpe, Vice-Chancellor of the Poona University, invited me to head a Committee of Enquiry to consider the propriety of the new method of imparting education in colleges on the lines of Oxford and Cambridge, which Dr Jayakar had introduced, and whether it should be continued My colleagues were Mr M R Masani and Mr S R Dongerkerry We suggested unanimously that the method introduced by Dr Jayakar should be scrapped

3 The Bank Award Commission

4 The National Commission on Labour

5 The Banaras Hindu University Enquiry Committee

6 Kashmir Enquiry Committee

7 Indian Council of Agricultural Research Institute Enquiry Committee

8 Delhi University Enquiry Committee to formulate the Scheme for Legal Education, which was entirely accepted, and which, I understand, has been adopted by many other Universities as well

9 Dearness Allowance Commission

In regard to the Bank Award Commission, I ought to place on record my thankfulness to Sir Rama Rao, Governor of the Reserve Bank, who placed at my disposal a very competent staff Mr Sawakar was my Adviser and Mr Korke was the Secretary of the Commission Both these officers were very helpful to me in discharging my duties, and the staff given to me by the Bank was very competent and trained and they did much of the technical work involved in the work of the Commission very quickly and satisfactorily

Before I began my work, naturally I went and saw Rama Rao, and though I did not formally record his evidence I said I would like to talk to you about the whole controversy ' It was known that the alterations made by Deshmukh in the Labour Appellate Tribunal Award were at least partly, if not mainly, due to the suggestions made by Rama Rao Naturally, Rama Rao tried to support the changes made in the Award and incidentally, though perhaps not deliberately, he told me that 'if I made any changes in the Government decision it would very seriously affect Deshmukh's position as Finance Minister ' I was naturally taken aback by the suggestion involved in the statement I promptly said "Sir Rama Rao, when I sit down to do the work of the Commission and write my report, I will not be concerned to see what effect it will have on the position of Deshmukh or any one else" He said "Yes, of course, you are right"

When I actually wrote the Report, I was in Poona and so was Deshmukh We were great friends, but Deshmukh was so particular about the decencies of public life and the responsibilities of the Union Minister of Finance that we did not even meet for a cup of tea during the whole period He deliberately avoided seeing me, and so did I.

Chapter 20

THE UPANISHADS PROJECT

After I returned to Bombay in August 1977, I had decided to live a quiet life and utilise my time in reading and writing For the first six months or more, I used to get invitations for delivering talks on different occasions from different parts of the country

My consistent reply in each case was that owing to health reasons I could no longer undertake journeys and stand the strain of speech-making After it was known that I was not accepting any invitation for speaking engagements, people no longer wrote to me Even then once in a way I did get personal invitations saying "We will look after your comfort, you can come by air, and you need not make a long speech, but people are eager to hear you" My reply was the same I decided not to go on the platform and make a speech, because doctors had cautioned me in that behalf That is why the only course which was open to me was to engage myself in reading law, politics, sociology and Indian philosophy It is in connection with this last item that Mr S Ramakrishnan, Executive Secretary of the Bharatiya Vidya Bhavan, renewed his constructive and inspiring proposal As Vice-Chancellor, I knew Mr Ramakrishnan and my contact with Dr K M Munshi satisfied me that Dr Munshi was very fond of Ramakrishnan and that Ramakrishnan was a real dynamic force who helped Dr Munshi in running the huge complex of several institutions which he had built all over the country Incidentally, after Dr Munshi's unfortunate death, the Bhavan's field of activity was extended beyond India A branch of the Bharatiya Vidya Bhavan

was opened in London It is expected one will be opened in the U S A very shortly When we held the All Universities Conference at the Bhavan s Andheri Campus, I came to know Mr Ramakrishnan very closely Since then we have been good friends

One day, Ramakrishnan asked me to be the General Editor of a scheme which the Bhavan had decided to launch and that was the Upanishads Project The idea was to cover the ten classical Upanishads The General Editor would give his translation of every Upanishad verse by verse, his comments thereon and thereafter under each verse the views expressed by the four Bhashyakaras — Sankara, Ramanuja, Madhva and Vallabha — would be translated and published I have attempted to interpret the Upanishads without doing violence to their language and I have tried to show that they do not preach *sanyas* as the *summum bonum* of life or *bhakti* either They preach *karma* (action), but of course *karma* must be *nishkama*, that is, without expecting any reward, and it must be performed by a person who is a *jnani* and who is a *bhakta* In other words, I have tried to show the synthesis between *jnana*, *bhakti* and *karma* In my view, in the age of the Upanishads, they realised, as we ought to today, that, unless every citizen does follow the doctrine of *karma yoga*, society will not progress Since I wanted an opportunity to express this view at length, I welcomed Ramakrishnan's proposal and so, instead of utilising my time only with reading and occasionally writing, may be on current topics or philosophy or literary topics, I decided to devote my time to the study of the Upanishads and translate them and interpret them in my own way.

I am conscious that I am returning to Sanskrit after an interval of nearly fifty years Until then I could claim to be somewhat of a Sanskrit scholar familiar with the

Upanishads, the *Brahma Sutras* and the *Bhagavad Gita* But when I joined the profession, I parted company with these works and became a lawyer From law to *Upanishads* is a big leap and I found for some time a little difficulty in picking up the thread I hope I have not completely failed in my work I have already translated and annotated eight Upanishads *Isa, Kena, Katha, Prasna, Mundaka, Mandukya, Taittiriya* and *Aitareya* This is an ambitious project and I am not sure whether Providence will permit me a long enough span of life to complete the project But the thought that my work in regard to eight Upanishads has already been completed gives me very great satisfaction The quality of my work, it is for the scholars to judge May be, I have made mistakes but I have done my best

In the Introduction to the first volume, where I have dealt exclusively with the Upanishads and their philosophy, I have quoted *Kalidasa* who says प्राशुलभ्ये फले लोभादुद्बाहुरिव वामन । meaning' like the dwarf, who raises his hands to obtain the fruit which is within the reach only of a tall person Such is my view of the significance and stature of the project which I regard as very prestigious Whether I did well to accept the invitation of Ramakrishnan or not, will depend on what the readers of the series feel about the quality of my contribution as General Editor of the project In any case, in the evening of my life I am busy with this work which, in the words of Schopenhaur 'gives solace to me in my life and will give solace to me at my death

There are two other motives which induced me to say 'yes' to Ramakrishnan, apart from the irresistible nature of his persuasion The first consideration was to pay a tribute to the memory of Dr Munshi, because this project would when completed be a prestigious addition to the

Bhavan's publications which Dr Munshi had started with his typical imagination and foresight This scheme has already produced a large number of prestigious works and I fervently hope that the Upanishads volumes will find their place in that catalogue The other consideration, which weighed in my mind, was that born as I am in a family of reputed Pandits it would be just and proper that I should pay the *pitranna* (debt owing to ancestors) which is one of the debts recognised by the *smrtikaras* Perhaps if my work is regarded as one of merit, it will be a tribute to my ancestors

In this scheme, I am receiving the co-operation of several Sanskrit scholars who have undertaken to translate the *Bhashyas* of the different *Bhashyakaras* Mr R A Kashyap and Prof R T Vyas, and lately Mr S B Velankar, have joined me as collaborators In regard to *Isa* and *Kena,* Prof Vyas was not available, because he was busy with other work of the Bhavan When we began the *Kathopanishad,* Prof Vyas joined us Gradually owing to his own work which fully occupied his time at the Bhavan, Mr Kashyap withdrew from daily attending at my place where we discussed the Upanishads verse by verse Since then Prof Vyas alone is my collaborator and as such attends the discussions every day when we discuss each Upanishad by turn, verse by verse, and I ultimately decide the interpretation A similar procedure is followed in regard to annotation Even though Prof Vyas was not present at the time when *Isa* and *Kena* were translated, he made some suggestions with regard to those Upanishads and they were accepted Professor Vyas is a real tower of strength to me because he is an academic actually doing the work of teaching and his contribution to the debate has an academic flavour He is devoted to this project and he is justly proud that he has been given a chance by Ramakrishnan to join me in the work He holds a

Sastri degree after going through the traditional course of Sanskrit learning in the traditional style He is also an M A Thus Prof Vyas combines in himself traditional and modern oriental learning

I am thus heading a team of scholars each of whom is a distinguished Sanskrit scholar and I am assisted by three collaborators I must however make it clear that the final decision in every case of translation and annotation is mine though before I reach my decision I give respectful consideration to the suggestions made by them That is why if there is any demerit the blame is entirely mine, while, if there is any merit, Prof Vyas can claim credit for it along with me, With failing health in the last stage of my life, I am engaged in a work which gives me great spiritual satisfaction Ramakrishnan takes a personal interest in the project and has encouraged me from time to time and in his sweet voice tells me that Providence will spare me at least until the Project is completed Thus my intention of spending a quiet time without putting my hand on any work as such has not materialised

The Bhavan has provided me with all facilities by way of securing books which I wanted and has also given me the assistance of a person like L S Eswaran, who, besides taking down in shorthand whatever we decide, that is to say my translation and annotation, occasionally contributes his own points in the discussions of the relevant problems He is particularly familiar with the *Puranas* and the *Bhagavad Gita* Besides he takes continued interest in the work and it is my good fortune that he is attached to me

The project is very attractive because, though the Upanishads have been translated by several scholars, no book published so far gives in one place the views

of all the *Acharyas*, and the modern view such as I have chosen to express is not to be found in any of the published books It is not as if I am putting forward a view which is totally original Tilak s *Gita Rahasya* is the main source of my inspiration, and other scholars who have taken a similar line are my guides It is in the light of their views that I have sought to put my interpretation on the different Upanishads

This then is the last phase of my work Though this work is an exercise in looking back, I am also looking forward in one sense, because the present work is not yet over by any means and may yet take quite some time to conclude The eight Upanishads which are already completed are comparatively smaller and the other remaining two *Brhadaranyaka* and *Chandogya* are much more comprehensive and longer in content I do not know if I will be able to complete them That inevitably must be left to Providence, or whatever other name one may call That Unseen Power Credit for whatever is so far done is due to Ramakrishnan who pressed me to accept this responsibility The Bhavan is co-operating with me in all respects Though I am working as Honorary Chairman and General Editor of the Upanishads Project, all possible assistance necessary for my work is provided by the Bhavan without the slightest difficulty or hesitation, and indeed with enthusiasm and pleasure I wish to record my debt of gratitude to the Bhavan and particularly to Sri Ramakrishnan for the assistance given me

Chapter 21

LAW, LAWYERS AND JUDGES

Now that I have put down some of my reminiscences, I propose to express my views on some general topics in which I am deeply interested I have been vitally concerned with the problem of ethics of the legal profession for more than twenty years In the chapter dealing with my tenure in the Supreme Court, I have deliberately summarised the views expressed by me in my lectures on Law, Liberty and Social Justice I repeat that my justification for including the summary is that they represent my faith in the ethics, ethos and obligations of the legal profession and the judiciary All these are ultimately founded on my firm conviction about the real purpose which law is intended to serve I must therefore apologise to the reader because some of the thoughts which are expressed here may appear to be repetitive

When I talk of law, I do not mean a particular statute or even a number of statutes in the statute book What law means is best described by eminent jurists and thinkers and I better begin by quoting some of them Lord Macmillan observed ' It is the guardian and vindicator of the two most precious things in the world — justice and liberty Its ideal remains constant and unchanging By the standards of justice and liberty which it sets up, all governments, all political theories must ultimately stand or fall " In other words the law we think of in this context is what Justice Brandeis significantly described as "the living law According to Dean Roscoe Pound, "the sociological method consists in study of a legal system functionally, as a social instrument, as a part of

social control and study cf its institutions, doctrines and precepts with respect to the social ends to be served It presupposes that law is a specialised agency of social control" According to this view, law has to meet the challenge of the times, from epoch to epoch Pound observes "While jurists have been at their tasks, a new social order has been building which makes new demands and presses upon the legal order with a multitude of unsatisfied desires Once more we must build rather than merely improve, we must create rather than merely order and systematise and logically reconcile details" According to Pound, 'legal history is the record of a continually wider recognising and satisfying of human wants or claims or desires through social control, a more embracing and more effective securing of social interests; a continually more complete and effective elimination of waste and precluding friction in human enjoyment of the goods of existence — in short, a continually more efficacious social engineering Cohen, the famous legal social thinker, appealed to the Bar in these eloquent words 'My appeal to the Bar was in the mood of Emerson's words 'Why should we grope among the dry bones of the past, or put the living generation into masquerade out of its faded wardrobe? The sun shines today also There is more wool and flax in the fields There are new lands, new men, new thoughts Let us demand our own works and laws and worship Law deals with human affairs and it is impossible to legislate or make any judgment with regard to them without involving all sorts of assumptions or theories The issue, therefore, is not between a fixed law on the one hand and social theories on the other, but between social theories unconsciously assumed and social theories carefully examined and scientifically studied Hence the lawyer who regards his work as a liberal profession rather than a commercial

trade, must not be satisfied with merely guarding the works which have been handed over to him He must study the stream of life and be constantly thinking of ways of improving the content of legal forms We too are men, and now we will live not as pall-bearers of a dead past but as the creators of a more glorious future By all means, let us be loyal to the past but above all loyal to the future, to the Kingdom which doth not yet appear

It is in the light of this view of law that I propose to discuss the duties, ethics and ethos of the legal profession I hope the profession will not hold that I am being pedantic in enunciating the principles in which I firmly believe To me cynicism is the worst enemy of the legal profession and unfortunately many of the Bar rooms in the country today are full of cynicism This is my deep regret Lawyers must remember that they have chosen to pursue and practise not business but vocation In the last analysis, the work they do for their clients is a kind of social service Of course, they must earn money but grabbing money should not be the main incentive in accepting briefs In a civilised democratic society like ours, for the settlement of disputes between citizen and citizen, and citizen and the State, the constitution has deliberately set up an independent adjudicatory machinery called the Judiciary When lawyers appear before judges, they must never forget that they are discharging a public duty

We have often been told authoritatively that arrears in law courts are mounting up to a frightening extent, and I remember to have read that one eminent judge said that, if these arrears went on mounting, the public would have no faith and confidence in the present method of adjudication It is true that work in the courts has multiplied, but that does not mean that, since the work in the courts has

multiplied five times or ten times, you must appoint judges in the same mathematical proportion I recall when a Chief Justice of one High Court which consistently had the largest arrears was asked how long he would take to get over the arrears, he smilingly but cynically replied If I am given ten judges more, the arrears would be wiped out in twenty years That is not the way to consider the problem The arrears accumulate because the initial trial of cases in the first court takes an unduly long time I have rarely come across cases where in the trial court the written statement by the defendant has been filed on the date mentioned in the notice which is served on the defendant along with the plaint The delaying element asserts itself from the very beginning and both lawyers and judges take it as a matter of course that a few adjournments for filing the written statement are conventionally required That is how the trial begins Every judge must insist that the date for filing the statement is meant to be complied with

Similarly the preliminary procedure before leading oral evidence also goes on slowly and merrily, unmindful of the time that is consumed Adjournments are granted to the lawyers, who are generally very competent, virtually to accommodate them, and that must be stopped If lawyers who are overworked do not engage juniors, they must be compelled to do so and, if they are not free, the juniors should carry on If a junior is not engaged by the busy senior lawyer, adjournment should be refused Justice Subba Rao was very particular in this matter in the High Court The result was that in his court no adjournment was ever asked for He followed that practice even in the Supreme Court and so did I Once it is known that adjournment is not granted, then lawyers see to it that all steps required to be taken in furtherance of the litigation are taken on the due dates It may seem harsh to refuse

adjournment but emotional considerations of harshness have no relevance because what is at stake is the reputation of the judicial system

Many times I got the impression that when the cross examination continues, the provisions of the Evidence Act in regard to relevance are suspended and the cross examination becomes an engine of torture of the witnesses Our adjudication, it is said, follows the adversary method but that does not mean that the judge should sit as an umpire and watch helplessly irrelevant facts being introduced on the record without any objection from the judge If only judges duly assert their power fairly and justly and control the leading of evidence, much of the time will be saved It all depends on whether both the judges and lawyers are conscious that the work they are doing is a matter of social significance though the cases with which they may be concerned may involve small claims or large claims It is the decision of these cases that constitutes what we call solemnly the Rule of Law

When we go to the Appellate court, it is my firm conviction that every Appellate judge should read the judgment in appeal at home He must do some home work and should not hear the appeal with an innocent or blank mind I do not mean to say that he should read it so carefully as to make up his mind as to what he should do in the case He should read the case broadly so that he should be able to regulate the debate at the Bar Unless he knows the broad points and the findings recorded by the court below, it would not be possible for him to regulate the debate effectively I have come across judges who boast that they do not believe in reading at home Personally I do not at all subscribe to this philosophy "I am a five-hour judge," is a boast made by judges who do not appreciate that they are servants of the public and they

owe it to the public to do their best to avoid delay, and delay can be effectively avoided if the arguments at the Bar are perfectly, justly but effectively regulated

Then again undue delay in pronouncing judgment creates an amount of distrust in the minds of lawyers and litigants It is idle to believe that the longer you ponder over a case, the better the judgment you produce I have found that if you are really attentive to the arguments which are addressed to you in appeal and these arguments are tested by proper and clear questioning, it is easy for you to deliver a good judgment immediately after the case is argued Delay in delivering judgments tends to accumulate cases undisposed of and that is a feature of which no court or judge should be proud

Recently on the report made by the Law Commission of which I was the chairman, some changes have been made in the Civil Procedure Code which will avoid delay But let me clearly state that it is not so much the procedure as the human agency that operates the procedure which makes all the difference Therefore my appeal to lawyers and judges is that they should take care that this problem of arrears is effectively solved by mutual co-operation In their advocacy, lawyers are entitled to be persuasive and to impress the judge with the merits of their case, but their advocacy must be fair and honest and must never tend to be long-winded, verbose or pedantic If a lawyer wins a bad case in an incompetent court, it should be a source of regret for him Judges and lawyers are both answerable to society They are both committed to do justice and do it quickly and speedily I have already referred to the fact that Pound complained against the tortuous course of democratic justice and its delays, unpredictability and cost I would earnestly ask the legal fraternity to bear this warning in mind and never forget that, when they argue

their cases, they are assisting the process of law and helping the Rule of Law Lawyers must therefore treat their profession as a vocation and not as business and must regard this as worship in the temple of justice It may sound sentimental but serious lawyers will realise the truth underlying this statement We are facing a very difficult time and the judicial system is under attack Therefore lawyers and judges must set their houses in order by mutual co-operation It can be done provided both lawyers and judges are conscious of their obligations to the community at large

In regard to lawyers I would suggest respectfully that it is their duty not to be mere witnesses of progress of political life in this country Lawyers took a leading part in the struggle for independence, but after freedom they have gone into their shell and generally tend to pass cynical remarks against all politicians and to look down upon political life and political parties I am not holding any brief for politicians and political parties, goodness knows they have to answer for many sins of commission and omission But why do not lawyers, who are the intellectual leaders of the community, take an active part in the movement of social reform and even political activities? The ethos and ethics of the profession require that they should not confine themselves merely to the four walls of the court and should not concern themselves merely with estoppel, marshalling, limitation and other points I would like to recall to lawyers the words of Mr Justice Cardozo 'The future, gentlemen, is yours We have been called to do our part in an ageless process Long after I am dead and gone and my little part in it is forgotten, you will be here to do your share and to carry the torch forward I know the flame will burn bright while the torch is in your keeping"

As to the judges, I had recently an occasion to write an article on judicial ethics in the *Bhavan s Journal,* (21 October, 1979) and I would like to reproduce the entire article at the end of this chapter because it elaborately deals with my view of judicial ethics

There are two or three points which need to be added to this article which I have reproduced Unfortunately the country is passing through a stormy political life and even adjudication, I am afraid, shows signs of tending to be politicalised In such a situation, judges must keep the path of impartial, objective, fearless and independent justice alive

As I have remarked earlier, a judge must inevitably choose to be a little aloof and isolated from the community at large He should not generally be in contact with lawyers, individuals or political parties, their leaders or ministers unless it be on purely social occasions Not that there should be confrontation between the judiciary and members of the Bar or the politicians, but when one enters the judges world, one inevitably has to impose upon oneself certain obvious restrictions We often hear these days about judges being friendly with certain lawyers too much, or judges attending too many private parties These remarks may be unfounded but the fact that rumours of this type are afloat should put the judges on their guard Judges owe a very solemn duty to the community at large and from day-to-day they must ask themselves whether they have done or said anything which is inconsistent with the oath of office they have taken and which otherwise are consistent with their obligations as a judge What I have said in this chapter may appear pedantic but I thought I ought to put on record my feelings and thoughts on the subject of ethos and ethics of the legal fraternity and the judiciary

I feel that at this critical hour in the history of India, the Rule of Law has to play a very significant role and judicial independence, fearlessness and impartiality must act as custodians and protectors of individual liberty and freedom The Rule of Law is a very comprehensive concept *"Dharanāt dharmam ityuchyate'* means that which sustains the social structure and helps the progress of society in all directions is *Dharma* i e Law It is this majestic concept of law to which lawyers and judges owe their loyalty and my firm faith is that the pursuit of law either at the Bar or at the Bench is a branch of social service This social service is of incalculable importance to the future of Indian democracy I feel tempted to conclude this chapter with another stirring appeal from Mr Justice Cardozo

> 'Where shall we find a more stirring message than the great speech delivered by Lord Brougham a century ago in the English House of Commons when he spoke in support of a motion that an address be presented to the king petitioning that a commission be established to inquire into the defects, occasioned by time and otherwise into the laws of this realm of England as administered in the Courts of Common Law, and the remedies which may be expedient for the same 'It was the boast of Augustus (I quote the closing words) that he found Rome of brick and left it of marble But how much nobler will be our sovereign's boast when he shall have it to say that he found law dear and left it cheap, found it a sealed book, left it a living letter, found it the patrimony of the rich, left it the inheritance of the poor, found it the two-edged sword of craft and oppression, left it the staff of honesty and the shield of innocence ?'

Having made this appropriate quotation, Justice Cardozo added

'Here is a kindling oriflame for all of us, a little gaudy and extravagant perhaps, but moving all the same Are there knights among our number that will put it within the power of our sovereign lord, the people, to utter a like boast?

JUDICIAL ETHICS*

Dr P B Gajendragadkar

When a judge of the High Court takes his seat on the Bench for the first time, he is administered the following oath

'I, P B having been appointed Chief Justice (or a judge) of the High Court at (or of) do swear in the name of God and solemnly affirm that I will bear true faith and allegiance to the Constitution of India, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws

In substance this oath constitutes the essence of judicial ethics

Most of us have seen the Taj and experienced feelings of exhilaration by its matchless beauty But those who built the Taj—workmen, masons, architects, engineers and others—were busy performing their part of the duty in the construction of the Taj that they rarely had time or the intention to observe its architectural beauty

What is true of the workmen and others who built the Taj is likely to be true of judges and lawyers who are

* From *Bhavan's Journal*, October 21, 1979

busy every day in arguing and deciding cases respectively In the hurry of their work they rarely have the time to consider the architectural beauty of law, which is technically described as the jurisprudential beauty of law

Jurisprudence, it is said by Laski, is the Eye of Law and when courts are administering law they are in substance performing a very important part which is necessary for the sustenance of society, its peace progress, well-being and prosperity

What is law and its function, one may ask

Sociological jurisprudence, which was expounded by Dean Roscoe Pound, describes the function of law in very clear and precise terms

Pound said Law is a continual, more complete and effective elimination of waste precluding friction in human enjoyment of the goods of existence, in short a continual, more efficacious social engineering'

According to this view, law upholds social order, sustains individual liberty and advances social justice

As Lord Macmillan observed 'Law upholds individual liberty and supports social justice not in isolation but in synthesis In other words, the whole objective of law is to try to establish a synthesis between individual liberty and social justice It is this majestic aspect of law which is to be borne in mind in deciding the nature of judicial ethics

Bearing true faith and allegiance to the Constitution and upholding the Constitution and the law, which is a part of the judicial oath and the very basis of judicial ethics, means that a judge must try to understand what the Constitution stands for and what it intends to achieve The Constitution has promised Indian citizens justice—political, social and economic, and in order to redeem

this promise given by the Constitution to the millions of poor, illiterate citizens scattered over thousands of villages in our country, the main instrument or weapon in the hands of democracy is law

Judicial ethics therefore requires commitment to the ideal prescribed by the Constitution and full awareness of the main function of law

In the morning, before courts begin their proceedings every day, it is customary for both lawyers and judges to bow They bow not to each other but to the Goddess of Justice

Courts of law can well be described as temples of justice In their hurry resulting from concentration on different cases which are being tried from day-to-day, both judges and lawyers are apt to forget the solemn significance of the first act of bowing

It is this act which imprints upon the proceedings in courts a truly ethical character, never mind whether the case is small and involves a petty claim, or very heavy and large claim, or it is simple enough or is complicated in law

Judicial ethics requires that lawyers and judges should apply themselves to their task in a spiritual and moral manner and no element of casualness or light-heartedness must be allowed to invade the process of decision-making as a result of fear or favour

Another important ingredient of judicial process flows from the fact that the Goddess of Justice is reported to be blind On most court buildings you see the statue of the Goddess of Justice holding the balance of justice in her hands

Blind, in this context, does not mean that the Goddess does not see It means that she is oblivious to the

respective status of the parties, whether they are rich or poor, whether they are important or unimportant, whether they are ministers or ordinary citizens, whether they are big industrialists or ordinary workmen and whether they are Hindus, Muslims, Christians or Jews

The Goddess of Justice is holding the balance and into the balance will go for weighing not the weight of the party or his importance but the weight, importance, relevance and significance of the respective points urged by the party The balance thus represents a purely objective, ethical and moral process This is an important ingredient of judicial ethics

The third important element of judicial ethics consists in what Mr Justice Hand, a very wise judge of the United States of America, always used to say, that a judge who makes no mistakes is yet to be born In other words when a judge hears arguments and ultimately embarks upon the process of decision-making, he must remember that fallibility is a badge of human reasoning and that he need not be certain that he is right He should very consciously, objectively, fairly and impartially weigh the pros and cons of the merits of both the sides and then decide which side deserves to win

In India, it is important to emphasise that judges must keep themselves completely aloof from all political controversies A judge who makes a public statement or writes an article in the press on any political issue or other matter which is likely to come before the court is untrue to the paramount ethical requirement of judicial office If he is very keen to do so, he should put off the judicial robe and enter politics Political advocacy and judicial decision-making can never go together

On the other hand, by his educational equipment and training and by the discipline to which he has to submit

himself in deciding cases, a judge owes it to the community at large to enter the stream of national life pertaining to educational, social and cultural matters In fact society is entitled to expect a lead from the trained mind of a judge in matters of this category provided, and that is a very important proviso, the judge must never discuss and publicly express his view on any matter which is likely to come before the court for his decision

Acceptance of judicial office need not mean that the judge should live in an ivory tower In fact I have just emphasised that it is his duty to take an active part in social, educational and cultural matters Indeed, I have always held that the person who believes that a judge has merely to hear cases patiently and to deliver judgments dispassionately, takes a very poor and narrow view of his functions Indeed he will be a poor specimen of a judge who forgets his obligations to the community at large, subject of course to the limitations which are obvious and some of which I have just indicated

Justice Holmes used to say that law was not a brooding omnipotence in the sky but a flexible instrument of social change It is this part which law has to play under the Indian Constitution but even in respect of this part of the law, a judge must not allow his personal views to trespass in his decision

As Justice Cardozo observes "My duty as a judge may be to objectify in law not my own aspirations, convictions and philosophies but the aspirations and convictions and philosophies of men and women of my time It is these latter aspirations, convictions and philosophies to which the legislature seeks to give effect by appropriate legislation

In dealing with the problem of judicial ethics, one negative aspect of the ethics needs to be emphasised

Judicial ethics requires that every one connected with the administration of law must treat it as a solemn duty to avoid delay, unpredictability and cost involved in litigation Let judges and lawyers remember that the administration of justice derives its strength only from the confidence that they enjoy from the litigating public in particular as well as the general community Let nothing be done or said by judges either in court or outside which would shake the confidence of the public in the impartiality, fairness and objectivity of the judge Judicial work is very solemn in character and ethical and moral in its discharge

Our courts over which judges preside are known as Courts of Law When Lord Reading went to Patna as Viceroy to open the new building of the Patna High Court, he made an eloquent speech describing the major contribution which courts in India make and would continue to make towards the sustenance of the Rule of Law in this country

At the end of the speech there was a garden party and a layman, who happened to sit by the side of Lord Reading, asked Him Why do you call your courts, Courts of Law rather than Courts of Justice ?' In a tone of humour, Lord Reading promptly replied Government do not believe in using satire in determining the nomenclature of their institutions

This was of course meant as a joke because, as I have repeatedly emphasised, Law and Justice go together Law sustains individual liberty and supports social justice Indeed, justice is one of the main objects of law but since the law is the instrument which helps in achieving its primary objective courts are naturally — as they ought to be — called courts of law Thus judicial ethics is basically and essentially moral because that is the character

of the duties which a judge performs and they all relate to the realm of law

Law, say the Upanishads, is the King of kings, far more powerful and rigid than they There is nothing higher than law By its prowess the weak prevail over the strong and justice triumphs It is this concept of law from which all principles of judicial ethics flow and therefore it is not surprising that judicial philosophy centres around ethics and morality

Chapter 22

THE SOVEREIGNTY OF PARLIAMENT

When we refer to the sovereignty of Parliament, in substance we are referring to the main question which has been the subject-matter of very severe and prolonged controversy and that is, whether Parliament's power to amend the Constitution under Article 368 is absolute or is subject to limitations outside those prescribed by the Article itself

This question arose in *Sankari Prasad Singh Deo* vs *Union of India*[1] The five-member court unanimously held that the power of the Indian Parliament to amend the Constitution was subject only to the limitations prescribed by the Article itself and was otherwise absolute and without any external unmentioned limitations This judgment was pronounced on 5 October, 1951 The same question was raised before the court in *Sajjan Singh* vs *State of Rajasthan*[2] On this occasion the court was divided I pronounced the three-to-two majority judgment in which the earlier judgment in *Sankari Prasad's* case was followed and the impugned amendment was upheld on the ground that the power of Parliament to amend the Constitution was subject only to the limitations expressly mentioned in Article 368 In both these judgments, the word 'amend' was interpreted to include the power to make any change in any of the provisions of the Constitution subject of course to the requirements

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1 A I R 1951 S C 458

2 A I R 1965 S C 845

mentioned in the Article itself Two judges took a different view This power according to the majority judgment obviously included the power to abridge Fundamental Rights if Parliament decided to do so This judgment was pronounced on 30 October, 1964

On 27 February, 1967, the court pronounced its divided verdict on the same point in Golaknath s case[3] The division was six to five The majority judgment took the view that Parliament could not abridge the Fundamental Rights Out of these six, according to five judges, Article 368 merely provided for the procedure to make amendments and the power itself had to be found in Entry 97 of List I of Schedule 7 of the Constitution The sixth judge, who joined the majority, held that the Article contained the power as well as the procedure, but it had to take certain steps before exercising its power concerning the Fundamental Rights Five judges adhered to the view expressed in the two earlier judgments On reading the majority judgment, a layman is likely to get the feeling that the judges honestly believed that Parliament should not make unreasonable amendments and so Article 368 must be construed as to impose on the Parliament certain limitations A feeling lingered that, if Article 368 is held to be merely procedural and, if the power is exercised under Entry 97, then the validity of the amendment may fall to be examined under the Constitution In the result the amendment in the Constitution which had been upheld in *Sajjan Singh s* case was struck down by the majority judgment on 27 February, 1967

But that was not to be the end of this controversy In 1973, the same question was raised once again in

3 Golak Nath vs State of Punjab A I R 1967 S C 1643

H H Keshavananda Bharati Sripadagalavaru and others vs *State of Kerala and another*[4] This time the whole court consisting of thirteen judges heard the matter The result was that seven voted in favour of the proposition that Article 368 conferred on the Parliament power to amend the Constitution but this power was subject to the proviso as well as subject to the conditions which are not expressly mentioned in the Article itself This necessarily implied that the Parliament cannot amend the basic features of the Constitution The Article is self-contained and it is noteworthy that the chapter contains only one Article, and so it will be legitimate to treat it as self-contained Incidentally, one may have to consider whether some of the Articles mentioned in the proviso and made expressly amendable, subject of course to the satisfaction of the additional requirement mentioned in the Article, cannot be legitimately treated as basic features of the Constitution

Six other judges, who were also members of the Bench who heard this case, took the view that *Sankari Prasad's* case was properly decided and they asked 'Where are the basic features prescribed in the Constitution ?' What are the basic features, each one of them asked in his judgment The result was that on this occasion again, the court was sharply divided (7 to 6) and though the majority view of *Golaknath* was virtually overruled, the power to amend was restrained by the consideration that this power cannot be exercised to affect the basic features of the Constitution

At this stage Mr L S Easwaran, who was taking down my dictation, wanted to know as a layman as to how many

4 A I R 1973 S C 1461

judges in all took the view that the court had taken in *Sankari Prasad s* case about the power of the court to amend the Constitution being limited only by the conditions expressed in the proviso to the said Article and how many differed from it, though they came to different conclusions (i) in *Golaknath* and (ii) in *Keshavananda Bharati* I said "Mr Easwaran, such counting is irrelevant in deciding the validity or correctness of judicial pronouncements It is only the members who constitute the Bench in a particular case that matter, that if there is a division, numbers have to be counted and the majority view prevails But you cannot count the number of judges in different Benches because that is a totally different and irrelevant consideration" He however said 'Tell me just to satisfy my curiosity, how many judges took the view taken in the first case and how many differed from it either in *Golaknath* or in *Keshavananda Bharati* ' I then stopped for a minute and, after counting, told him "Eighteen took the view of *Sankari Prasad* and thirteen have taken the contrary view I told Easwaran that when the same judge or judges sat in more Benches than one, he or they should be counted only once for the purpose of finding out the number on either side which, no doubt, is a mechanical and irrelevant process

Subsequent decisions of the present court indicate that the court is content to accept and follow the majority view in *Keshavananda Bharati's* case, though it is the result of a very sharp division amongst the judges who heard that case and there the matter stands

I have now ceased to be actively interested in law and I am engaged in the task of studying the Upanishads and writing on them and, therefore, I express no opinion on this controversy at this late stage I have already

expressed my view in *Sajjan Singh,* in the Tagore law lectures[5] and in the Mohan Kumaramangalam memorial lecture [6] I earnestly hope that the present trend of the court's decisions does not lead to any confrontation between the Highest Court and Parliament If that unfortunate event were to take place, it will mean grave danger to the future of democracy in this country Speaking for myself, I must confess that I continue to be an unrepentant sinner

5 *The Indian Parliament and the Fundamental Rights* (1972) Eastern Law House, Calcutta

6 *Indian Democracy Its Major Imperatives* (1975) B I Publications Delhi

Chapter 23

THE FUTURE OF INDIAN DEMOCRACY — SOME IMPORTANT PROBLEMS

Having finished what I had to say by way of looking back and before concluding, I wish to put on record my view briefly and clearly on some important issues facing Indian democracy

What is the future of Indian democracy, I ask myself, and my answer is clear and emphatic Indian democracy will not break but will continue to march for ever and ultimately achieve by democratic means the dream of the constitution-makers of establishing a secular State, the dream eloquently set out in the Preamble and described in the Directive Principles I know that at present we are passing through a difficult time and doubts are entertained in some quarters whether democracy will really succeed in this country, but the unity of this country and the democratic way of life it has adopted after mature consideration are in my view in no danger at all

My faith in this view of Indian democracy is based on the historical fact that India, claiming legitimately the most ancient pedigree in the world, has survived and has shown no signs of decay or disintegration Our history spreads over 5,000 years beginning with the *Rigveda* which was composed in 2,500 B C on the most conservative estimate Since then invisible but unbreakable cultural, philosophical and ethical bonds have united this country and kept it alive and vibrant I realise that during this long course of history, India has witnessed glorious

periods followed by periods of degradation and corruption But true to the statement in the *Bhagavad Gita* .

यदा यदा हि धर्मस्य ग्लानिर्भवति भारत ।
अभ्युत्थानमधर्मस्य तदात्मानं सृजाम्यहम् ॥

yadā yada hi dharmasya glanir bhavati Bharata,
abhyutthānam adharmasya tadā'tmānam srijāmyaham

Whenever corruption appears to overwhelm the community at large, some religious, philosophic and social rebel is born and he starts a new cult giving a new turn to the Hindu way of life Consider the cases of Buddha, Mahavira, Nanak, Basava, Ram Mohan Roy, Ramakrishna Paramahamsa, Vivekananda, Rabindranath Tagore, Dayanand Saraswati, Ranade, Agarkar, Phule and the large number of gifted people who tried to bring the community back to its original ways of the straight life consistent with the ethical principles of Hinduism Curiously enough the new cults, which were started by the rebels and which preached equality of castes, in place of dominance, gave women the same status as men and frowned upon mere rites and rituals, ultimately became part of Hinduism itself That is how Hinduism is not a religion in the traditional sense but a forward-looking, broad-minded, philosophic way of life Hinduim defies definition That is the reason for my faith that a country which has lived for 5,000 years in spite of its ups and downs is not going to disintegrate or be destroyed, nor is its democratic way of life going to be in real danger You may say this is wishful thinking, my answer is, it is my intellectual conviction, though one may in turn call my intellectual conviction as nothing more than wishful thinking

It is true that, despite the brave and dedicated efforts made by inspired social rebels, superstitions have grown,

caste supremacy has remained, Hindu society has been fragmented and the most odious and heinous form of untouchability has been almost institutionalised This evil has to be fought It will be fought and I venture to hope that it will be conquered and Indian democracy will succeed in its crusade against poverty, ignorance, squalour and unemployment and establish an egalitarian State which is committed to the welfare of the common men and women and which establishes social and economic justice in this country

Look at the history of India after we became free One party was continuously in power for nearly 25 years and the opposition parties were not very significant in numbers But Nehru was the leader of the ruling party, he was a magnanimous, great democrat and always paid close attention to the Opposition's point of view and treated the Opposition party with respect No one can seriously dispute the fact that under his leadership the country made substantial progress industrially and economically and acquired the status of an honoured and respected nation in the world

The essence of parliamentary democracy is the existence of two or more, though not too many, political parties The fact that during the first 25 years opposition parties did not grow was no doubt an infirmity in the composition of the Indian democracy That inevitably led to two evil consequences The party in power became complacent and forgot its obligations to the community On the other hand, the opposition parties, failing to gain power by the ballot, tried to make the Parliament a debating society and a place of pointless criticism of men and policies Besides they were tempted to take politics on to the streets What happened in Gujarat in 1975? The State legislature had to be dissolved as a result of rowdyism

of young, dissatisfied people on a large scale on the streets of Ahmedabad and other parts of Gujarat Then followed Jayaprakash's great movement for the removal of corruption in public life It gathered momentum and J P s personality made it almost a crusade Ultimately it led to the emergency When the emergency was lifted partly and elections were held, the Congress party lost and Janata came in power A hope was engendered that, if Janata continued to be in power for five years, a two-party system would emerge and democracy would begin to function in a very healthy way But unfortunately, the Janata party, which was composed of different constituents, disparate in their political, social and economic philosophies, could not function as one party and fissures appeared in the constituent elements of the party right from the start The result was inevitable Mutual bickerings led to the disruption of the party and that led to a fresh election and Mrs Indira Gandhi came back to power

Following the example of the Janata government, Indiraji dissolved the legislatures in nine States and held fresh elections I have grave doubts as to whether the dissolution of the State legislatures either by the Janata government or by the Indira government was strictly justified by the relevant provisions of the Indian Constitution At the time the Janata party came into power, the atmosphere in the country was surcharged with anger against the Congress party for having declared an emergency and its abuse by subordinate officers, in some cases, reportedly in very gross and shocking manner In the result, nobody was in a mood to question whether the method adopted in ordering fresh elections in all the States in view of the provisions of the relevant article in the Constitution After Indiraji won the present elections to the Lok Sabha by a huge majority, she purported to

follow the precedent and directed fresh election in eight States As expected, in most of these States she won and in the result we have come back to square one One party with huge majorities is ruling the country and the opposition parties are in a hapless minority and even then fragmented and divided In spite of this all, I firmly believe that in the course of the next five years all sensible patriots forming different opposition groups at present will see their way to come together and form one united party, and that will make a substantial difference in the functioning of democracy

But before that happens, it is likely that the politics of the streets and extra-parliamentary movements may raise their heads My fear that this will happen leads me to consider whether *satyagraha* or civil disobedience is legitimate and permissible in a welfare democratic State

This is the first question on which I wish to express my view I recognise the validity of Thoreau's dictum that, if a person regards a law or an executive action as immoral or perverse, he is entitled, and indeed it is his duty, to disobey it provided of course he is prepared to face the consequences of his actions This dictum is accepted as valid by all democrat and I myself believe that Thoreau was perfectly right But when such individual breach of laws or executive orders leads to breach of laws and orders collectively by a large number of persons, it becomes a different proposition In democracy, is it permissible for citizens to organise civil disobedience against what they regard to be illegal, improper or unjust executive orders or laws ? My answer is No

Consider what civil disobedience of this kind will mean in a country governed by a democratic constitution. In Gandhiji's time civil disobedience was perfectly valid

and it proved to be a very effective instrument in the hands of Gandhiji and his followers But that was because there was the country as a whole on the one side, and the foreign government on the other In a democratic and free country the position is radically changed Whenever any law passed by Parliament or a State legislature is sought to be disobeyed or any executive order passed by an administrative branch of the government under any law is challenged by civil disobedience, it means a fight between the party in power and the party opposing the law or executive order Such a course, I venture to suggest, is not permissible It is open to the party which dislikes the law to wait until the next election, win a majority and change the law Have you ever heard of civil disobedience in England or in America? The blacks' movement of civil disobedience against racial discrimination in the U S A is more like Gandhiji s movement of civil disobedience That is no analogy to the civil disobedience of which I am speaking Besides, if civil disobedience is started, inevitably it is bound to lead to politics of the streets and, as a necessary corollary, to violence All this is, in my humble view, totally inconsistent with the democratic way of life which we have adopted Civil disobedience is a proud inheritance from Gandhiji's movement, but it cannot be invoked now when we are governed by an elected Parliament and elected State legislatures The politics of the streets is totally opposed to the rule of law That is precisely what was done in Gujarat when the Gujarat legislature was dissolved in 1975 My view, I am afraid, may appear to be unsound, but since I hold it firmly and clearly, I thought I should put it on record

Fasting for a political purpose is, in my view, not permissible in a democracy and is even morally unjustified It is coercive in effect, it clouds reason and prevents a

fair, calm and dispassionate consideration of the issue or issues for which the fast is undertaken Fasting is an irrational way of forcing the attention of government on a problem and compelling it to take the view which the person fasting wants it to accept

Take, for instance, the fast undertaken by Senapati Bapat That great man I always held in high esteem, but when he threatened to fast on the issue of Belgaum, I spoke on the public platform respectfully calling on Senapati not to undertake the fast and invited his attention to the fact that a fast was not the democratic way of solving social, economic or political issue Take, for instance, I said, if another eminent citizen in Bombay also undertakes a fast and urges that Belgaum should not be given to Maharashtra, how do you decide the issue? Both are eminently respectable men and both are determined to lay down their lives for what they regard to be just causes!

Morarjibhai likewise undertook a fast to compel the Union Government to hold election of the Gujarat legislature which had been previously dissolved under coercive street politics and violence that introduced chaos and confusion in social life The Union Government did hold the election but in my view elections should not have been held under the coercion of the fast My relations with Morarjibhai have been extremely cordial for many years and I hold him in high esteem He is a man of principles and he would not budge an inch from what he thinks to be right But how can you solve any complicated, difficult, complex or controversial issue by means of fasts?

I venture to say that initially Jawaharlal committed a mistake in yielding to the fast of Pottu Sriramulu He was against fasts but, since Sriramulu died and violence erupted, he yielded and the demand for an Andhra Pradesh

came to be conceded Recall on the other hand the incidence of Macswiny who died a slow death in the British jail, but the British Parliament did not move in the matter at all

The whole basis of a democratic way of life is based in reason and faith and belief that all problems, social, economic or political, however complicated, must be decided by argument and ultimately by voting in the relevant legislature Therefore, like *satyagraha*, fasting also is totally irrelevant under a democratic way of life So also things like self-immolation

Then I take the question of language Shortly stated, my view is that English is bound to retain its predominant position in the life of the country for many years to come I do not dispute the proposition that we must have a national language, but Hindi is not called the national language It is called a link language and the discussions leading to the adoption of Hindi by the Constituent Assembly itself evinced a very sharp difference of opinion, and members were almost equally divided

I am not, on the theoretical aspect of the question I am emphasising some practical aspects which are of paramount importance Take the question of adjudication If you insist that High Courts must write their judgments in the regional languages, it follows that the district judges and subordinate judges will do likewise and the lawyers, who practise in all these courts, will address the courts in the same language In such a situation, what will be the language of the Supreme Court ? It cannot be English because the judges and lawyers have always been transacting their business in the regional languages If it is Hindi, those hailing from non-Hindi speaking areas will be handicapped and the Hindi-speaking lawyers and judges will have the monopoly of work in the Supreme

Court That will at once raise a cry for another Supreme Court which functions in English When some High Court judges proudly declare that they have delivered their judgments in Hindi, they do not realise the consequences of the course on which they are embarking They like to write their judgments in Hindi not because Hindi is a link language but because Hindi happens to be their mother-tongue

All political parties say that until and unless non-Hindi-speaking States agree to accept Hindi as a link language it will not be forced on them Having made this categorical declaration, it will be illegitimate on the part of the Union Government to make subtle efforts to force Hindi on non-Hindi States In my travels in India in connection with the different commissions, I had occasions to talk with judges, lawyers and ministers and I have found that, though Madras is articulate in its opposition to Hindi, Bengalees also are not very much in its favour because they feel, and probably rightly, that Bengali is a much richer language than Hindi In the eastern sector of India, they love English, in fact, English is the mother-tongue of a large majority of the citizens who happen to be Christians, but they are Indian citizens and their wishes must be respected Punjab is not very keen on Hindi, nor is Kashmir

But apart from these considerations, the whole structure of the judiciary may have to be altered or Hindi imposed on the High Courts so that there will be no difficulty of recruiting judges from all the High Courts in India and giving an opportunity to lawyers from different States to practise in the Supreme Court If the High Courts function in the regional languages, the problem of the recruitment to the Supreme Court and of the lawyers who practise before the Supreme Court will raise a formidable

obstacle in the integration of the country Therefore, English has to continue and, if wisdom prevails, it should be included in the relevant schedule of the Constitution

What I have said about adjudication and Hindi is equally true about higher education Where are the text-books? Thirty years have gone by and yet I do not think we have appropriate text-books in most of the subjects, at least at the post-graduate stage The mobility of teachers will be immediately affected if regional languages become the media of instruction at the college level Take the case of Bombay in particular I happen to be familiar with its problem Bombay is a cosmopolitan city The Marathi-speaking people are no doubt the largest single community, but they are not a majority community There are Gujaratis, Sindhis, Parsees, Christians, South Indians, Bengalees and others who cannot be asked or compelled to learn Marathi well enough to be able to receive instruction at the college stage in that language If you make Marathi the medium of instruction in the colleges of Bombay, you will really have broken faith with the minority communities when a solemn assurance had been given to them that the cosmopolitan character of the State would not be affected If you require education at the University stage to be imparted in the mother-tongue, then there will be scores of colleges, each one teaching its students in the language of its community In other words, there will be English colleges, Gujarati colleges Marathi colleges, Hindi colleges, Punjabi colleges, Urdu colleges and so on, and these will lead to undesirable consequences which can be easily imagined How will you hold the examination of these different colleges and will this situation not lead to disintegration rather than integration? Will it not lead to immobility of teachers rather than their mobility? At present in Bombay University, several teachers are non-Marathi speaking, they are all recruited

by properly constituted, independent Selection Committees This is the pride of Bombay University because it claims that its teaching staff is one of the most efficient in the country The same must be the position in all Universities in metropolitan towns

Besides, in this connection, nobody seems to have seriously considered one very important and relevant matter Construing Articles 29, 30 and 31 of the Constitution, the Supreme Court has held that they guarantee freedom to linguistic minorities and the interpretation placed by the Supreme Court on these Articles means that, if a college is started in a State where the society starting the college is formed by people speaking a language other than that of the State, that college will in substance be autonomous in the sense that except for the syllabus and the examinations the University's writ will not run I had expressed a different view in one of my printed lectures and had pointed out that this view might lead to anarchy Take for instance the case of Bombay The colleges started by linguistic minority societies are very large in number and their administration such as the appointment of professors will not be subject to the jurisdiction of the University I do not propose to dilate on this point but to state categorically that the Supreme Court, even after my opinion was brought to their notice, sitting in a larger Bench to reconsider the matter, ultimately came to the same conclusion

Now taking the case of Bombay, if the medium of instruction is made Marathi, the minority colleges cannot be ordered to accept Marathi as the medium in their colleges They will be free to continue English though for examination purposes and syllabus they are subject to the jurisdiction of the University Actually in one case where the Vice-Chancellor had refused to confirm the

appointment of a professor on the ground that he did not satisfy the minimum qualification prescribed by the University, that order of the Vice-Chancellor was set aside by the Supreme Court on the ground that the University cannot impose its rules in such matter on, what I may call, the linguistic minority colleges If these linguistic minority colleges introduce as medium of instruction their own language instead of English, a large number of teachers in their colleges will have to quit and an overwhelmingly large number of students may have to seek admission in colleges where their mother-tongue is the medium of instruction

In other words, logically there may be as many colleges which are practically autonomous as there are linguistic societies which have started such colleges It will lead to chaos because, so far as examinations are concerned, the University has jurisdiction over them So it will have to appoint examiners who will be able to examine answer books written in English, if English is adopted as the medium of instruction by such colleges, or if they adopt their respective mother-tongues as the medium of instruction, examiners will have to be found by the University to examine papers answered in those languages This latter position will not arise for the simple reason that in colleges which are founded by societies, members of which belong to a minority language group, an overwhelming number of students do not speak the language of the founding society and the majority of teachers would be in the same position If the demand for making the medium of instruction in mother-tongue is accepted in places like Bombay and other cosmopolitan capitals in the country, the view taken by the Supreme Court is bound to lead to confusion and chaos Or else, such colleges will have to be made autonomous colleges in the sense in which the term is

understood in the educational world This is a very relevant factor affecting the future of all Universities, but nobody seems to have applied his mind seriously to it With all respect, I still feel that the construction placed by the Supreme Court on Articles 29, 30 and 31 makes it almost inevitable that English should be the medium of instruction Though in my view the construction placed by the Supreme Court may not be right, if as a result of that decision, English continued to be the medium of instruction at the University stage, I would be very happy

The three-language formula has a very curious origin It was formulated by politicians for considerations of expediency to persuade the non-Hindi States to accept Hindi It requires three languages to be adopted and taught, namely the mother-tongue, Hindi and English, and in the case of Hindi-speaking States, any language other than Hindi preferably one from the South Now it is clear that Tamil Nadu is in any case not going to accept this formula Its formula is the two-language formula, English and mother-tongue (Tamil) So far as the Hindi-speaking States are concerned, as the Kothari Commission pointed out long ago, you may start chairs in South Indian languages, but why should the students come to learn a South Indian language unless there is the motivation for doing so? These chairs are established, but I do not think that any South Indian language is seriously studied by a substantial number of students in any Hindi-speaking State

Besides, another important point, which has been forgotten, is that Sanskrit is left in the lurch Sanskrit, which is the mother of all Indian languages except Tamil, does not appear in the picture at all We talk of our ancient cultural heritage, the grandeur of our philosophy,

the splendour of Sanskrit literature and yet our students are not expected to learn Sanskrit under the three-language formula The idea was, if any one spoke in favour of Sanskrit, he was an obscurantist, that is to say, he was advocating the cause of Sanskrit which was equated with Hindus and therefore he was advocating the cause of the RSS I find it difficult to understand how this dislike for Sanskrit can be justified The three-language formula suffers from this serious infirmity Besides, though everyone swears by the three-language formula, no one actually practises it I would therefore appeal to the Union Government to consult educationists and revise the whole outlook on the problem of education and the problem of languages Everyone glibly talks about changing education radically, but few of them who talk loudly on this subject know anything about education Therefore let me put it on record respectfully but earnestly that the three-language formula will never be a reality in this country

Reverting then to the more specific and inspiring prospect of the future of Indian democracy, let me say emphatically as a rationalist that the future of Indian democracy is not in doubt and that in course of time India will achieve its great objective of establishing socio-economic democracy in this country I am not unconscious of the fact that humiliating problems like untouchability cannot be solved merely by law Public opinion has to be created for that very purpose It is a fallacy to assume that government will solve social problems No, let us realise that social problems can be solved effectively, and indeed untouchability can be wiped out, only by public education and the education of the public conscience and that is the work of progressive intellectuals That is why in the chapter dealing with Law, Lawyers and Judges, I have earnestly appealed to them

to take a lead in the matter and begin the work of social reform

As Dr Ambedkar said when he moved the Indian Constitution for its acceptance in the third reading, that we cannot be politically free and equal if we are socially unequal and if some citizens are branded as untouchables Equality is not practised in compartments it is practice of the whole and it governs all human relations and affairs The problem is grave and very difficult to solve, but democrats who believe in the future of Indian democracy must do their best to solve this problem If the problem of untouchability is not solved quickly by democratic means, untouchables will revolt They are already angry and angry men act desperately Let us therefore hearken to the problem and try to solve it by joint efforts Dedicated, continuous education of the public, giving every help to the Harijans and securing equality for them form the duty of us all Economic problems can be solved by legislation wisely undertaken if, and mind you this if is very important, these provisions are very strictly enforced Land laws have been passed long ago but the story of the implementation of the beneficent provisions of these laws makes very sordid reading

At present we are passing through a difficult time Storm signals are seen, but it is my firm belief, call it wishful thinking if you like, that India will rise to the occasion and solve its problems, however complex and complicated they may be Its political life will take the form of parliamentary democracy, consisting of two parties sooner than we imagine, and then the country will be on a democratic course of life determined to achieve the aim which our Constitution has placed before us

India, as I have stated, has the most ancient pedigree It has had its ups and downs, periods of glory

and periods of depression, its behavioural pattern today shows fragmentation This needs to be rectified This country which has lived for 5,000 years is ultimately bound by spiritual, ethical and philosophic ties which are unbreakable, if only the philosophy and ethics are coupled with economics of socialism and the obligations of democracy, nothing can stop her march on to prosperity India is eternal, everlasting Though very ancient, she is ever young From the past is born the present and from the present is born the future Indian culture is ageless and ever young I am but a tiny seashell thrown up by the mighty flood of modern Indian renaissance

The world-renowned historian, Dr Arnold Toynbee, has solemnly declared It is already becoming clear that a chapter which had a western beginning will have to have an Indian ending if it is not to end in the self-destruction of the human race At this supremely dangerous moment in human history, the only way of salvation for mankind is the Indian way—Emperor Asoka's and Mahatma Gandhi s principle of non-violence and Sri Ramakrishna s testimony to the harmony of religions Here we have an attitude and spirit that can make it possible for the human race to grow together into a single family—and, in the atomic age, this is the only alternative to destroying ourselves

The Voice of Ancient India had come to Swami Vivekananda, it also came to Mahatma Gandhi—it is the Voice of the Vedas, of the Upanishads, of the *Bhagavad Gita*, of the genius of Indian culture—"of a new twilight (as Aurobindo calls it), not of an evening but a morning *Yugasandhya India of the ages is not dead, nor has she spoken her last creative word she lives and has still something to do for herself and the human race"*

That is also the message of the Vedas and it is with that message I will conclude this chapter which, in a sense, constitutes *obiter dictum*

सगच्छध्व सवदध्व स वो मनासि जानताम् ।
देवा भाग यथा पूर्वे सजानाना उपासते ।।
समानो मन्त्र॰ समिति समानी समान मन सहचित्तमेष्याम ।
समान मन्त्रमभिमन्त्रये व॰ समानेन वो हविषा जुहोमि ।।
समानीव आकूति समाना हृदयानि व ।
समानमस्तु वो मनो यथा व सुसहासति ।

Rig Veda X 191 2-4

Come together, speak together,
let your minds be all of one accord
As ancient gods unanimous sit down to their
appointed share
The place is common, common the assembly,
common the mind, so be their thought united,
A common purpose do I lay before you, and
worship with your general oblation
One and the same be your resolve,
and be your minds of one accord,
United be the thoughts of all that all may
happily agree

Chapter 24

EPILOGUE

As I come to this epilogue, I am surrounded by darkness because the Nanda Deep in my life was extinguished by the icy hand of cruel Death on 20 April 1980 Shalin had been ill for quite some time and she fought her illness with typical fortitude and courage Her doctors said that the way she smiled and kept up her cheerful attitude upto the last moment was almost the attitude of a saint Her fortitude, her courage and her irrepressible faith in God remained unshaken upto the end But when she passed away, the light in my life went out, I am left lonely, literally alone and groping my way in complete darkness I have been used to walking about and moving in my life in the beneficent light of the Nanda Deep, but Destiny has denied me that privilege

For some time life seemed to me without any purpose and I was depressed, though my daughters and other relations tried to console me They all told me "Begin your work, that way alone will you be able to regain your former zest for life and, what is more important, that will give satisfaction to the soul of the departed Dear one' Even in the last week of her life when she was almost sinking day by day, when I had gone to see her, she asked 'Does Easwaran come and take daily dictation or not?' And I sorrowfully and almost in tears said 'No, I have stopped that work' She said "It is not fair, call him tomorrow and resume your work Complete the Upanishads and your autobiography before your call comes" She said this in a calm voice

unaffected by what was happening to her and by the excruciating pain which the foul disease was causing her

Every morning when I get up, I tell myself "The house where I live is not now a home, it is a construction of four walls and nothing more Life has gone out of this house ' I repeat what Tagore once said 'I am never less alone than when I am alone ' I have been familiar with the truth of this proposition and I realise its intellectual significance, but emotionally I am not able to understand or appreciate it I am alone and the only consideration which brings me some consolation is that every day that comes, my hour is arriving nearer

In the *Mahabharata* there is a dialogue between Yama and Dharma, when Yama asked Dharma 'का वार्ता *Ka vārta* — What is the news?", and Dharma answers, भूतानि काल. पचतीति वार्ता *Bhutani kālah pachatiti vārta*—Time makes every one older day by day I wish Time make me older much quicker so that this journey without the familiar, beneficent light of the Nanda Deep will come to an end I am not saying this in a mood of depression I am saying this calmly in a philosophic way

As these thoughts were troubling me, I came across a speech delivered by the great jurist-philosopher Justice Holmes on the occasion of his 90th birthday (8 March, 1931) It appears that on that occasion his admirers all over the world congratulated him and offered their respectful felicitations to him, and in Cambridge a symposium was organised in his honour It was a typical American symposium Chief Justice Hughes spoke from Washington and the speech, tape-recorded, was relayed to 500 people who had gathered in Cambridge to attend the function Dean Clark of the Yale Law School spoke from New York and that speech was relayed to the Cambridge audience and, at the end, the message of Holmes, which was

tape-recorded in Holme s chamber, was also relayed It is well-known that Holmes was a master of law, literature and philosophy, and the felicity of his expression and the philosophic manner in which he expresses his thoughts are inimitable Let me quote the whole of his speech

> In this symposium, my part is only to sit in silence To express one s feelings as the end draws near is too intimate a task
>
> ' But I may mention one thought that comes to me as a listener-in The riders in a race do not stop short when they reach the goal There is a little finishing canter before coming to a standstill There is time to hear the kind voices of friends and to say to one s self The work is done But just as one says that, the answer comes The race is over, but the work is never done while the power to work remains ' The canter that brings you to a standstill need not be only coming to rest It cannot be while you are still alive For, to live is to function That is all there is in living
>
> And so I end with a line from the Latin poet who uttered the message more than fifteen hundred years ago
>
> Death plucks my ear and says, Live—I am coming

Let me then make an earnest effort to resume my work on the Upanishads for, after all, in human life, work is worship

Appendix I

PRALHAD BALACHARYA GAJENDRAGADKAR

(*Life Sketch*)

Birth 16 March 1901 at Satara (Maharashtra)

Death 12 June 1981

EDUCATION

Primary and secondary Satara

Higher

Intermediate Karnataka college, Dharwar

B A (First class) Deccan college, Pune 1922
Awarded Dakshina fellowship

M A (First class) Deccan college, Pune (1924)
Winner of Bhagwandas Purshottamdas scholarship for securing first rank in Sanskrit and Gokuljee Jhala Vedanta prize for securing first rank among those who answered in Sanskrit the paper on Vedanta

LL B Indian Law Society's Law College, Pune (1926)

Activities in the college

1 Participant and winner of prizes in debates and debating competitions
2 Editor of the Marathi section of the Deccan College Quarterly

Professional Career

1 Joined the Appellate Side Bar of the Bombay High Court in June 1926
2 Elevated to the Bench of the Bombay High Court in March 1945

3. Appointed judge of the Supreme Court of India in January 1957
4. Appointed Chief Justice of India in February 1964
5. Retired as Chief Justice of India in March 1966

AFTER RETIREMENT

1. Vice-chancellor of Bombay University, March 1966 to September 1971
2. Honorary Chairman, Law Commission of India, September 1971 to August 1977
3. Director, Central Board of the Reserve Bank of India, 1966 to 1969
4. Along with Earl Warren, former Chief justice of the USA, member of the committee of experts on the application of conventions and recommendations of International Labour Organization, Geneve (1972 to 1979)

COMMISSIONS & COMMITTEES OF INQUIRY

1. Bank Commission 1955
2. Chairman, Dearness Allowance Commission (1966-67)
3. Chairman, Jammu and Kashmir Inquiry Commission (1967-68)
4. Chairman, National Commission on Labour (1967-68)
5. Chairman, Benaras Hindu University Inquiry Comittee (1968-69)
6. Chairman, Indian Council of Scientific Research Inquiry Committee (1977)

PADMA VIBHUSHAN Award in 1967

LL D (*Honoris Causa*)— Karnatak University

Sir Jehangir Ghandi Medal for Industrial Peace, 1969

ORGANISATIONS WITH WHICH ASSOCIATED

1 President, Social Reform Association of Maharashtra (1952-1954)

2 President, Swastik League, Bombay

3 President, Shikshan Prasarak Mandali, Pune

4 President, Indian Law Society, Pune

5 First Chancellor, Gandhigram Rural University Madurai

6 President, Asiatic Society of Bombay

7 President, Ramakrishna Mission, Bombay

[Otherwise than as President, he was associated with India International Centre, New Delhi, Managing Council of National Centre for the Performing Arts, Bombay, Board of Governors of Shri Ram Centre for Industrial Relations, New Delhi, National Integration Council and its Standing Committee]

TOURS

1 1965 Represented India at the Magna Carta Celebration (750 years) in London

2 1965 Toured the United States of America at the invitation of the U S Chief Justice and delivered talks on the Indian constitution at several Universities

3 1965 Led a delegation of Indian jurists to the U S S R

4 1965 Led the Indian delegation to the Commonwealth Law Conference, Australia

5 1968 To Kenya to deliver the first Gandhi Memorial Lecture at University College, Nairobi

PUBLICATIONS

1. Sanskrit text of Nanda Pandit's *Dattaka Mimamsa* and its English translation
2. *Hindu Code Bill* (1950) (Lectures under the auspices of Karnatak University)
3. *Law, Liberty and Social Justice* (Lala Lajpatrai Memorial Lectures) (1965)
4. *Tradition and Social Change* (Fourth Pranlal Devakaran Nanjee Memorial Lecture) (1966)
5. *Kashmir—Retrospect and Prospect* (All India Radio)
6. *The Imperatives of Indian Federation* (Fourth J N Tata Lecture) (1969)
7. *The Constitution of India* (First Gandhi Memorial Lecture, Nairobi) (1969)
8. *Secularism and the Constitution of India* (K T Telang Endowment Lectures) (1971)
9. *The Indian Parliament and the Fundamental Rights* (Tagore Law Lectures) (1972)
10. *The Philosophy of National Integration* (Third Jawaharlal Nehru Memorial Lecture) (1974)
11. *Nehru—A Glimpse of the Man and His Teachings*
12. *Indian Democracy—Its Major Imperatives* (First Mohan Kumarmangalam Memorial Lecture) (1975)
13. *Law, Lawyers and Social Change* (First Pandit Motilal Nehru Memorial Lecture) (1976)
14. *Hindu Law of Religious and Charitable Trusts* (Joint Editor) (1979)
15. *General Editor of "The Ten Classical Upanishads"* (Bharatiya Vidya Bhavan), First Volume published in 1981

Appendix II

(Mr Justice P B Gajendragadkar's Reply to the Felicitation to him by the Bombay Bar on his Elevation to the Supreme Court)

I have often heard it said, but I did not realise so far how profoundly true it is, that when the heart is full the tongue is tied When I joined the Appellate Side Bar in August 1926, I could not have looked forward to many friends inside the four walls of the High Court building The academic atmosphere of the college where I was educated, and the scholastic atmosphere at home had in fact made me a stranger to the life that faced me at the Bar Today, however, when time has come for me to say good-bye to the High Court, I can justly claim that it is my privilege to have a very large number of friends who have been consistently generous and kind to me throughout the thirty years that I have been working in the High Court An ancient Sanskrit poet has compared human associations with the meeting of logs of wood in the stream of the mighty ocean Logs of wood, says the poet, meet in the current of the sea, move on together for some time, then separate and depart—each one in its own direction Philosophically, the comparison may be sound, but, emotionally, all human parting is essentially sad As the Chinese proverb puts it Deep is the water in the peach-blossom spring, deeper still is our heart's feeling when good friends are parting At this hour of parting, my feelings of grief and sorrow are too deep for words That is how I have realised today, as never before, that when your heart is full your tongue is literally tied!

When I took my seat on the Bench in 1945, I recall that I had told my friends that in discharging my duties as a

judge I would always try to remember that the final verdict on my judicial career would inevitably have to be pronounced by the members of the Bar and the litigating public The verdict that has been pronounced this evening is far more generous than I was entitled to expect It bears obvious traces of emotional partiality and warmth, and I feel that it may also to some extent be based on the requirements of conventions which have to be observed on such occasions Next to the approbation of his conscience, the approval and appreciation of his judicial work by the members of the Bar and the litigants is the highest reward for any judge I find that it is my good fortune to have received this high reward this evening from generous friends at the Bar That makes it so difficult for me to express my gratitude to you all in adequate or appropriate terms

We often speak of the exalted position which our High Court occupies in India today In assessing the strength and in measuring the height of the status of the Bombay High Court, it is necessary to remember that we are the proud inheritors of a glorious tradition from the past All objective judgments on achievements of individuals or institutions must recognise the existence of the invisible, but continuous thread of cause and effect between the past, the present and the future If the position of the Bombay High Court today is exalted and honoured in the country, we the lawyers and judges of today must cheerfully render our tribute to our predecessors who have handed over to us the glorious inheritance of worthy traditions The anxiety of each one of us must also be to make a worthy addition to our inheritance in our time and pass it on in due course to our successors If it be true that during my career as a lawyer and as a judge I have done nothing which is unworthy of the noble traditions of this Court, I would part with you and this Court a proud man indeed !

Let us, however, remember that the strength of the High Court lies in the confidence that it enjoys from the litigating public and its representatives, the members of the Bar In the discharge of our duties from day-to-day, we are really engaged in the task of searching for truth Whether the dispute is between citizen and citizen or between citizens and the State, Courts are always engaged in the examination of the merits of the dispute and in finding out where the truth lies It is true that, in order to facilitate the discovery of truth, democratic legislatures devise rules of procedure which regulate pleadings between the parties and the admission of evidence at the trial It is also true that, in order to avoid the possibility of error, legislatures adopt the device of checks and counter-checks in the forms of appeals and revisions Sometimes the lay litigant is puzzled by the unduly long course that litigation takes in our country and the discrepant and conflicting views that judges express from court to court If this Court sometimes appears to be in a hurry, it is because its conscience is troubled by the inordinate delay that would otherwise be caused in the disposal of cases brought before it Rules of procedure which are intended to facilitate the discovery of truth seek to narrow down the scope of the controversy between the parties, but sometimes these rules introduce an element of rigidity in the settlement of disputes which may not always be conducive to the discovery of truth In the administration of criminal law we often enough hear the whisper of reproach that guilty men sometimes escape punishment, and it is even said on some occasions by impatient public workers that the safety of life and property may be in jeopardy if the doctrine of reasonable doubt is generously and extensively applied Fortunately, the problems of reconstructing our procedure and adjusting our laws to the requirements of today are being considered by a distinguished Commission consisting

of eminent lawyers and jurists of our country It is to be hoped that, as a result of its labour, the Commission would make just and necessary recommendations and that legislature will without any hesitation implement them by appropriate legislative process Meanwhile it must be the duty of all lawyers and judges to maintain the confidence of the public, for it is the confidence of the public which is the sole basis of the strength and the status of the High Court

It may sound platitudinous, but it is nevertheless absolutely true, that the success of democracy in our country depends substantially, if not wholly, on the success of the rule of law In a modern democratic State the functions of the Legislature, the Executive and the Judiciary are well-defined and the spheres of their respective activities are well-established The progress and stability of a modern democratic State depends upon the vision, the wisdom and the foresight of its legislatures, the efficiency and incorruptibility of its executive, and the independence, impartiality and integrity of its judiciary In deciding disputes between citizens and citizens, as well as in hearing complaints made by citizens against the State in respect of legislative enactments or executive orders, Courts must hold the scales of justice even between the parties, and it is the function of the Bar to assist the Courts in upholding the best democratic traditions about the administration of the rule of law Sometimes we are apt to forget that the Bench and the Bar act and react on each other, and the long and glorious history of this Court shows that the exalted position which this Court occupies in India today is the result of the joint contribution made by a series of eminent judges assisted by an illustrious series of eminent and distinguished lawyers of the Bombay Bar When lawyers argue their cases in courts of law and judges decide them, it is not their function to consider

the propriety of the policy adopted by the legislature in enacting laws I have always felt that a judge should never allow his personal, economic, political or social views to trespass in his judgments Judges in a modern democratic State must, and do always, function without fear and without any hope of favour, and it is in the light of this tradition that the work of every judge must ultimately be judged Before I part with you, it is my duty to acknowledge gratefully the consistent and generous co-operation that I have always received from the Bar in the discharge of my duties If my judicial work can claim any merit at all, I must gratefully pass on the credit for that work to the invaluable assistance that I always received from the members of the Bar

In our daily work we are no doubt dealing with the facts and the points of law that arise in individual cases In some cases we are called upon to deal with claims substantial in a financial sense, it is also our duty to deal with complex and complicated questions of law But in the hurry of our daily work and under the pressure involved in studying the facts of individual cases, we should not forget the essential significance of the administration of law in a modern democratic set-up The Constitution of India, to which we all owe allegiance, has enjoined upon the country to establish equality—political, social and economic—amongst its citizens, and in the pursuit of this ideal, legislatures in the country enact several measures The administration of these laws and the enforcement of their provisions in courts of law is not always a matter of mere mechanical construction Both lawyers and judges are and ought to be conscious of the radical change that is taking place in the fundamental aspects of law in a modern democratic State Just as the doctrine of laissez faire in economics is now obsolete, so is the static view of law with which most of us were familiar in our early days A

modern democratic State cannot, if democracy is to survive, follow the doctrine of merely keeping the ring clear when disputes arise between contesting parties on socio-economic issues A democratic welfare state is naturally impatient to attain the goal of social and economic equality, and the journey towards this goal has to be assisted by legislative regulation If economic inequalities have to be removed, if social equality had to be established, and equal opportunities provided to all citizens in this country, law may have to regulate major socio-economic relations of citizens, and when democratic legislatures enact laws for this prupose, the philosophy of social life on which such legislation is based must be understood and appreciated by all citizens in general, but by lawyers and judges in particular Judges do not make laws and never must attempt to make laws by a process of judicial interpretation But in administering socio-economic laws and in interpreting them, judges should not be oblivious to what Mr Justice Holmes so appropriately and eloquently described as 'the felt necessities of the times The dynamics of law has never been more eloquently described than by the *Brahadaranyakopanishad* ' Law', says the Upanishad, is the king of kings, far more powerful and rigid than they Nothing can be mightier than law, by whose aid as by that of the highest monarch even the weak may prevail over the strong A judge who makes no mistakes is yet to be born Wise judges are fully conscious of their fallibility But whether right or wrong, in administering justice a judge must constantly endeavour, with the assistance of the Bar, to sustain the rule of law in the country All of us realise that the future of democracy in this country in this sense depends upon the efficiency of the administration of law, and that is how the work that lawyers and judges do in courts of law today has a special significance of its own

I know it may sound visionary or utopian, but I always like to look upon courts of law as temples of justice History shows that the utopia or fantasy of today becomes the commonplace or platitude of tomorrow I fondly believe that in our fast-moving country the administration of law itself would, sooner than we expect or anticipate be regarded by lawyers, judges and the public at large as an essential branch of social service It is our proud privilege as judges and lawyers to be working at a time which can be truthfully described as the hour of destiny in the history of our country This hour of destiny beckons to us all to do our utmost, each one in his or her own sphere of activity, to attain the ideal which the Constitution has placed before us May I, in all humility, but with all my heart, appeal to you all to give your maximum assistance to us with the full consciousness that you the lawyers and we the judges are really partners in the administration of justice in this country? Let us all do our best to maintain the highest traditions of which this Court is justly taken as a symbol all over the country

Appendix III

JAWAHARLAL NEHRU

(*This is the text of the reference read out by the Chief Justice in the Supreme court on the reopening of the court in July,* 1964)

Mr Attorney-General and Members of the Bar,

Before we begin the business of the court for the new term today, it is our painful duty to express our profound sense of sorrow at the death of India's first Prime Minister, Jawaharlal Nehru, which took place in New Delhi on the 27th of May, 1964 With the departure of Nehru from the Indian scene, a glorious epoch in the history of modern India has come to an end

Born in affluent circumstances and brought up and educated in accordance with the best contemporary aristocratic tradition, when Nehru joined the Allahabad Bar, it seemed that his future career was set to the pattern which convention usually prescribed for brilliant young intellectuals belonging to his class Providence had, however, willed otherwise and so, the young, impressive and impetuous Nehru came into close contact with Gandhiji, the sage of Sabarmati, who had meanwhile appeared on the political horizon of India and had begun to preach his revolutionary doctrine of truth, non-violence, non-attachment and non-cooperation Thus began the relationship of teacher and disciple between Gandhiji and Nehru which was destined to have such a significant and far-reaching impact on the history of India

Gandhiji and Nehru differed in many ways and, in several areas of thought, their approach was not the same

and that occasionally gave rise to a stimulating dialogue between them in the form of correspondence which served to educate public opinion But both of them passionately shared a living faith in two basic ideas Nehru, like Gandhiji, was ruthlessly determined to bring to a speedy end the foreign rule in India which crippled her growth and development and to usher in Swaraj, and Nehru, like Gandhiji, was completely dedicated to the service of the poor and hungry millions of India whom Gandhiji in his characteristic style preferred to describe as Daridra Narayan'

This fundamental unity in their basic postulates bound the teacher and the disciple together, the teacher showered boundless affection on his disciple and the disciple returned the teacher s love with infinite reverence Verily, this spiritual relationship between Gandhiji and Nehru is in many ways unique in the history of mankind

Under Gandhiji s inspiring lead, the nation soon engaged itself in an unceasing non-violent struggle against the British bureaucracy, and in this struggle, Nehru consistently occupied his accustomed place of honour During this heroic epoch of the national struggle for independence Nehru s personal life was completely transformed and his ideology went through a revolutionary change He gave up the comforts of daily life, abandoned his intended plan of pursuing the profession of law and whole-heartedly dedicated himself to the cause of public service, the call of Tyaga (sacrifice) and Seva (service) proved irresistible in his case Ultimately, with the dawn of political freedom on the 15th August 1947, the epoch of Gandhiji, the father of the Nation, came to an end with a sense of proud fulfilment, and then began the era of Nehru, the Maker of Modern India

The most significant contribution that Nehru and his illustrious colleagues made to help the steady and unfailing growth and development of democracy in a free India was the drawing up of the Constitution which was adopted on the 26th January 1950 The Constitution with just pride proclaimed that the cherished goal of free India was to guarantee to all its citizens justice—political, social and economic and it ordained that the nation s march towards the attainment of this ideal would be by democratic process Inevitably, the Constitution proceeded to give a place of pride to the fundamental rights of citizens enshrined within its articles and simultaneously made appropriate, rational and harmonious provisions under which the said valued rights could be reasonably adjusted with the competing claims of socio-economic justice The adoption of the democratic process for the establishment of the egalitarian Welfare State is the most distinguishing feature of the Nehru era

The democratic process postulates the paramount importance of the rule of law, and so, under the Constitution, the Supreme Court and the high courts were constituted as the custodians of the fundamental rights of Indian citizens, and it became their sacred duty to safeguard these fundamental rights and to keep an unceasing vigil on all legislative acts and executive actions in order to ensure that the statutes passed by the legislatures and the actions taken by the executive in pursuance of them, strictly conformed to the relevant provisions of the Constitution The judiciary in India has ever since been faithfully and fearlessly discharging the sacred task which has been entrusted to it by the Constitution

Judicial process is sometimes apt to be slow, prolonged and tardy and it is likely to create impatience in

minds which are keen on achieving socio-economic objectives without delay Even so, Nehru never wavered in his firm conviction that ultimately the rule of law is the only firm and solid basis for the democratic way of life, and so he consistently recognised the significance and importance of the work that the judiciary has to perform in the context of the democratic way of life

Firm belief in the paramount necessity of adopting a rational and scientific approach in the discussion and solution of all secular socio-economic problems, passionate adherence to the doctrine of secularism which refuses to recognise the relevance or materiality of the citizen s religion in the realm of socio-economic matters of public importance, underlying faith in the unity and integrity of India and in the absolute equality of all her citizens whatever language they speak, whichever religion they follow and whatever caste or creed or region they belong to, and unwavering, steadfast, relentless determination to pursue the democratic way of life, these basic concepts can broadly be regarded as the distinguishing features of the progressive socio-legal philosophy which Nehru continuously preached and practised throughout his life There is no doubt that it is by adhering to these principles faithfully in action, that the country would perpetuate the memory of Nehru

On this solemn occasion, this court fervently resolves in a spirit of humility that the rational and appropriate way in which the brotherhood of law consisting of lawyers and judges can pay their homage to the memory of Nehru is to rededicate themselves to the mighty task of sustaining and upholding the majesty of the rule of law We must all remember that for the successful operation of the rule of law, judges must act fairly, impartially, objectively and

without fear and favour, and lawyers must whole-heartedly assist the judges in the administration of justice by conforming to the highest and the best ethical traditions of the profession which require that they must be independent, fearless and efficient, and must never depart from the path of rectitude, honesty and integrity in their work Let us then devote ourselves to the discharge of our respective functions and duties in a spirit of complete co-operation, for that is the best way to honour the memory of Jawaharlal Nehru

May Nehru's soul rest in peace !

Appendix IV

LAL BAHADUR SHASTRI

(This is the text of the reference read out by the Chief Justice in the Supreme court on 18, January 1966)

Mr Attorney General and Members of the Bar,

Before we begin our work for today, it is our sad and solemn duty to mourn the death of our Prime Minister, Lal Bahadur Shastri When the country heard about the successful conclusion of the Tashkent conference, all his countrymen were eagerly looking forward to give Lal Bahadur Shastri a hero s welcome on his return to New Delhi, but the merciless and icy hands of death snatched him away and cruel fate faced all of us with the problem of receiving the body from which Lal Bahadur s life had passed Never in the history of India has a top leader met his death in such distressing and poignant circumstances of dramatic irony Truly can it be said that having led the country in war, Lal Bahadur laid down his life in the cause of peace

Lal Bahadur was born in a respectable but poor family without the proverbial silver spoon in his mouth' In his young days and throughout the period of his education, he had to make his own way and had to face with fortitude and courage the problems inevitably associated with impecunious circumstances He earned while he learnt and his progress in education was made literally with the sweat of his brow

Lal Bahadur's life is a saga of devoted and dedicated career of social service Self and family never claimed his attention He plunged himself whole-heartedly in the

struggle for political freedom and was at the helm of political life in U P for many years He courted imprisonment several times and soon came to be regarded as one of the foremost amongst Indian political leaders

Small in physical stature, simple in dress, soft in speech basically humble and modest in his approach and attitude in life, Lal Bahadur possessed a very large heart and profoundly deep inner spiritual strength, he was endowed with an iron will, unconquerable fortitude and courage and inflexible determination to face all problems with philosophical calm and composure Truly can it be said about Lal Bahadur that he represented the very best in the swadeshi culture of India It is a remarkable tribute to Indian democracy that a true plebeian like Lal Bahadur rose to be the Prime minister of India During the whole of Lal Bahadur's career not even a whisper of reproach ever attempted to assail his spotless character It is the loss of such a noble soul of India we are mourning today

During the recent emergency, Lal Bahadur became the undisputed leader of the whole nation All citizens rose like one man to fight aggression under the inspiring leadership of Lal Bahadur His voice became the voice of the whole country and the grim resolve and relentless determination which he showed in facing the grave emergency served as a beacon light to all his countrymen It is often said that man s real strength is tested and proved on occasions of grave emergency The grave emergency which this country recently faced showed that Lal Bahadur belonged to that category of dedicated and fearless leaders of whom the country is justly proud

So far as the judiciary is concerned, Lal Bahadur was always anxious to respect its independence and its status and dignity I have had many occasions to discuss with him problems concerning the judicial administration in

this country and sometimes when the independence of the judiciary appeared to be threatened, I thought it necessary to take up the matter with him, and I invariably found that he was consistently and unreservedly determined to support the independence, dignity and the status of the judiciary in this country By his death, we have lost a staunch and genuine supporter of the rule of law

Lal Bahadur's tenure as Prime Minister was relatively short He guided the destiny of this country just for about 18 months The success and glory of human endeavour is not, however, judged by the length of office that a person holds, but by the extent of his achievements during his tenure Truly has it been said by the old Sanskrit poet that it is far better to burn effulgent even for a moment than smoulder faintly for endless years

मुहूर्तं ज्वलित श्रेयो
न च धूमायितं चिरम् ।

Muhoortam jvalitam sreyo na cha
dhoomayitam chiram

I have no doubt that having regard to the glorious part that Lal Bahadur so decisively played in leading the nation to victory during the last emergency, history will unreservedly accord him a place of honour His regime as Prime Minister will go down in history as the regime of the uncommon common-man who made the hour of the nation's trial the crowded hour of its glory

To the grief-stricken members of Lal Bahadur's family, our hearts go out in full sympathy We wish to assure them that in this solemn hour of their sad bereavement, the members of the Bar and the judiciary in India join all their countrymen in sharing with them their sorrow and anguish

The only way in which we can express our grateful respect to our departed Prime Minister for the rich

inheritance he has left to us is to rededicate ourselves to the service of the rule of law which has been entrusted to us by the Constitution

The ancient Sanskrit text has enjoined that

अतो न रोदितव्यहि
क्रिया कार्या स्वशक्तिश. ।

Ato na roditavyamhe
kriyah karyah svashaktisah

On such solemn and mournful occasions we should not shed tears, but each one of us should take a vow to do his duty to the nation with a sense of purpose, unity and dedication That alone is the way to express our respect to the memory of the departed leader, Lal Bahadur Shastri

May Lal Bahadur s soul live in eternal peace !

Appendix V

SOME TRIBUTES PAID TO Dr P B GAJENDRAGADKAR AFTER HIS DEATH

I had high regard for Justice Gajendragadkar s legal acumen and social consciousness and respected his views But more than that I had valued his personal concern and friendship '

—Prime Minister Indira Gandhi

Justice Gajendragadkar s services to the country and this State in various fields especially judicial and educational are legendary and would be remembered for ages with admiration '

—Air Chief Marshall O P Mehra
(the then Governor of Maharashtra)

' Extremely grieved at the passing away of Justice Gajendragadkar which is a personal loss to me In him we have lost an eminent jurist, an upright Judge, a Sanskrit Scholar, and a great suppoiter of Indian culture, and Bharatiya Vidya Bhavan His latest contribution to the Bhavan is the critical edition of Upanishads

—Shri Jaisukhlal Hathi
(the then Governor of Punjab)

"Justice Gajendragadkar was a tower of strength to the junior members of the Bar and he goaded them, even to the point of being misunderstood, to argue their own cases In fact, it was during the period of twelve years that Gajendragadkar was a judge of the Bombay High

Court that the practice of engaging senior counsel in all cases, small or big, fell into disrepute and many juniors who, otherwise, would have been born to blush unseen did not have to waste their talent on the desert air But he was a hard task-master and a strict disciplinarian That is the stern stuff of which the older generation of Judges was made He was intolerant of slovenly performance, whether it came from a junior advocate or a senior advocate And he applied to them the same unbending yardstick with a view to ensuring the emergence of a more competent Bar Unquestionably, the Bombay Bar grew in its stature and produced lawyers of eminence and repute because of the illustrious lead given by Judges like Gajendragadkar"

—From the speech of Chief Justice Y V Chandrachud at the reference to the memory of Mr Justice Gajendragadkar in the Supreme Court of India

"Apart from his illuminating judgments on constitutional issues, Gajendragadkar will be remembered for his lead in interpreting the laws dealing with the labour problems It will not be an exaggeration to call him an architect of the Industrial Law dealing with questions of labour and capital in this country Gajendragadkar also possessed the genius of spotting out latent talents in every field where he had occasion to work He encouraged such talents to flower, took interest in their progress for the good of the State His selections rarely proved to be wrong Many Judges and lawyers in the Supreme Court and the Bombay and Gujarat High Courts feel still grateful to him for such initial encouragement Many of the present leaders of the Bar were just on the threshold of their

professional career when he left this Court for the Supreme Court in 1957"

—From the speech of Chief Justice V S Deshpande at the Full Court Reference to Justice Gajendragadkar in the Bombay High Court

Whatever branch of law Justice Gajendragadkar dealt with, his judgments were characterised by incisive analysis, original thinking, lucid exposition and felicitous expression He made an outstanding contribution for the development of labour law in our country Many of his judgments like the judgment in the controversy between the Uttar Pradesh Legislature and the High Court at Allahabad, are classic judgments

—From the speech of Chief Justice D M Chandrashekhar at the Full Court Reference to Mr Justice Gajendragadkar in the Karnataka High Court

With his passing away the country has lost a legal luminary and an upright citizen His death has been widely mourned"

—From the speech of Chief Justice S K Ray at the Full Court Reference to Mr Justice Gajendragadkar in the Orissa High Court

"It is rather difficult for me to speak of a man like Dr Gajendragadkar whose personality and interest, as it has been said, so greatly overflowed the channels of the law that the bounds are almost obliterated Dr Gajendragadkar made a special contribution to the development of the constitutional law and the law relating to industrial disputes He was alive to the social philosophy of the day and in interpreting the statute was animated by consciousness that the law is for the good of the

country and for the betterment of the society He was undoubtedly one of the exceptional personalities of the era "

—From the speech of Justice K K Dubey at the reference made to Mr Justice Gajendragadkar in Madhya pradesh High Court, Indore Bench

'Justice Gajendragadkar was the scion of a family of renowned Sanskrit Scholars He himself kept the tradition of the scholarship of the family which flourished in him in its full bloom He was an illustrious and outstanding Judge and Jurist His distinctive contribution in the field of Indian Jurisprudence is of high water mark It has the stamp of scholarship and erudition and his work bears the insignia of his vast knowledge of the subject in which he happened to be in His judicial works are clear testimony of his clarity in the legal principles which he weilded with adept felicity for rendering his judgments If fact, judgment, never-failing sense of honest independence, industry and expedition in the dispensation of justice are the qualities that make a great Judge and raise a Judge in Public esteem, we have no hesitation in saying that Justice Gajendragadkar is one of the greatest Chief Justices of India that we have had the honour of having to adorn the highest court of the land He was a great personality, a talent and a genius One has just to open the pages of Law reports to see the depth of his learning and scholarship Seldom has a Judge grasped complicated cases more quickly and disposed of them more readily than it was found in Justice Gajendragadkar His profound knowledge in the field of labour legislation had earned for himself the Chairmanship of the National Commission of Labour All the Judgments delivered by him are classic in the field of the branch of law on which they were rendered He surmounted continual intri-

cacies, rationalised current thoughts and generated ideas for the future vibrant with live force His mortal frame is no more but his dogmas and tenets contained in his works will ever live fresh in our memory and will give us impetus to emulate his ideas and ideals "

—From the speech of the Acting Chief Justice at the reference to Mr Justice Gajendragadkar in the Gauhati High Court.

An era of erudition and scholarship in various fields like education, Judiciary and social reform has ended with the passing away of revered Bhayyasaheb Gajendragadkar, as he was familiarly known to our family since my father s time My father always held him in great esteem and our relations could be described as ancestral' I still have nostalgic memories of his stay in our Kunj-Vilas bungalow at Malavli in 1942-43 and since the death of my father in 1948 whenever I used to meet him, he always treated me with great warmth and filial attachment "

—Mr Justice V D Tulzapurkar, Supreme Court of India

' I remember with gratitude the encouragement which I received from him when, after a lapse of 7 years, I started my practice in the Bombay High Court in 1948 His contributions as a judge of the Bombay High Court, as a judge of the Supreme Court and as the Chief Justice of India, to the development of Indian law in the direction of social progress, will never be forgotten "

—V M Tarkunde, Senior Advocate,, Supreme Court.

'Justice Gajendragadkar was a great man and a greater Judge He is one of the greatest and finest judges that

the Bombay High Court produced He was a person with great foresight and could read what the posterity needed and wrote for them The like of him are not often born

—Mr B N Deshmukh, Former Chief Justice, Bombay High Court

"No doubt he had led a full life and had achieved success in many fields and, fortunately, for all who loved him he had been granted the fullness of days Men like him are rare, and his mere presence in times like these was an assurance that in case of need his voice or word would be heard on the side of right If life be likened to a pilgrimage I believe it can be said of him at the end 'And so he passed over, and all the trumpets sounded for him on the other side

—Mr H M Seervai

'A promoter of talent and supporter of right causes, Shri P B Gajendragadkar contributed immensly to the regeneration of right attitude in public life His courage of conviction was superb Inspite of being confident of his premises he was always in search of truth and listened patiently to other point of view lest he might miss an opportunity to know the whole truth '

—Mr K K Shah

I am deeply grieved by the demise of Shri P B Gajendragadkar whose quality of erudition and readiness to welcome social change have left indelible impression on those who have had the privilege to know him'

—Mr Ramrao Adik

' It was our privilege to have Dr Gajendragadkar as the first Chairman of the Sameeksha Trust Both the Trust and Economic and Political Weekly benefitted immeasurably

from Dr Gajendragadkar s sage counsel throughout the period of his Chairmanship of the Trust and in particular during the critical months following Shri Sachin Choudhari s death in December 1966 It was my personal good fortune to have come in close contact with Dr Gajendragadkar in connection with the work of the Trust and the Weekly I shall always cherish the help and affection I unfailingly received from Dr Gajendragadkar

—Mr Krishna Raj, Editor,
Economic & Political Weekly, Bombay

We all knew him as an illustrious son of India, a man of integrity and intellectual honesty Such people are rare

—Dr (Smt) Jyoti H Trivedi, Vice-Chancellor,
S N D T Women s University, Bombay

Though he was well known all over the country as one of our most outstanding judges, I do not know how many people are fully aware of his immense contribution as a pathfinding jurist and one who made the judicial process subserve the highest interests of society by a most progressive, yet wholly authentic, interpretation and application of the law '

—Mr Nittoor Sreenivasa Rau
Former Chief Justice of Karnataka High Court

' The late Shri Gajendragadkar was not only a distinguished jurist, a great Chief Justice and Savant, but also a patriot and an eminent public figure of India In his death, a void has been created which is difficult to fill

—Prof Ravinder Kumar, Director,
Nehru Memorial Museum & Library, New Delhi

' The legal acumen and progressive legal philosophy is apparent in his several renowned judgements on Industrial

and constitutional law He has been responsible for the dynamic change in matters of interpretation of Industrial Law He always harped on social economic justice and had before him millions of have-nots in this country

He gave new dimensions to the concepts of Labour laws He excelled in all branches of life He has written several books of high eminence, he has headed five Commissions He represented India in U K , U S A , Australia and impressed the Conferences with his high intelligence, scholarship and oratory of profound knowledge of the subjects discussed in these conferences He has been a great social reformer, educationist and an eminent jurist '

—From the resolution of the General Body of the Advocates' Association of Western India, Bombay

'This meeting of the General Body of the Karve Institute of Social Service, Pune-29, deeply mourns the sad demise of Dr P B Gajendragadkar who expired in June 1981 Dr P B Gajendragadkar rendered valuable service to this Institute and also shouldered the responsibilities as the Trustee for quite some time In him, the Institute has lost an active member and a social worker May his soul rest in peace

—From the resolution of the General Body of the Karve Institute of Social Service, Pune

' Dr Gajendragadkar, a noted jurist, was an authority on the Constitution, and helped to lay down the principles of the law regulating labour-capital relations He achieved further eminence and distinction in 1955 by his decisive and far-reaching report as Chairman of the Bank Award Commission

"His association with the Asiatic Society of Bombay was long and intimate He was member of the Society since

1933, a member of the Committee of Management during the year 1948-51, one of its Vice-Presidents during the years 1952-57, its President during the years 1966-71, and continued to be a member of the Society till death He took keen interest in the welfare of the Society and the Library In his passing away, the Society has lost a wise guide and an esteemed friend '

—From the resolution of the Managing Committee of the Asiatic Society of Bombay

In co-operation with the Social Service League and the Bombay Social Reform Association, Shri Gajendragadkar revitalised the Maharashtra Social Conference as a forum for mobilising public opinion in favour of social reform and social justice Under his dynamic leadership the first session of the Conference which was held in Pune proved a great success as it had a mass appeal He introduced progressive ideas in the curricula of different faculties in the University of Bombay when he was its Vice-Chancellor

—From the resolution passed by the General Body of the Social Service League, Bombay

'He was a well-wisher of the University employees all over the country and his recommendation as the Chairman of the National Commission on Labour would go a long way in giving them trade union rights '

—Shri B S Hota, Secretary-General, All India University Employees' Confederation

A legal luminary who distinguished himself as Chief Justice of India and Chairman of the Law Commission he was a man of wide perceptions and vision FICCI Awards have attained their present status thanks to the guidance,

co-operation and help of Justice Gajendragadkar over a long period."

—Shri D H Pai Panandikar, Secretary-General Federation of Indian Chambers of Commerce & Industry, New Delhi

We were struck not only by his great scholarship, power to accommodate people, and ability to bring together divergent points of view, also by a sense of humility Apart from the sphere of education, his eminence as jurist, social reformer and scholar will always be remembered by his grateful countrymen.'

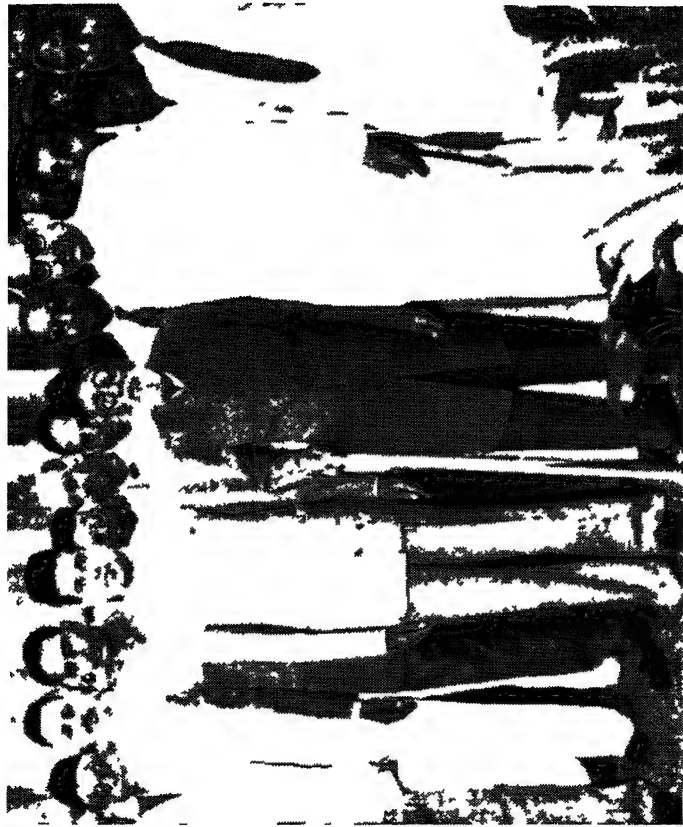
—Prof Monindramohan Chakrabarty, Vice-Chancellor Jadavpur University, Calcutta

Former Chief Justice of India, P B Gajendragadkar, who died in Bombay on June 12 after a long illness, will be remembered for some of his momentous rulings that could act as forerunners for progressive legal reforms

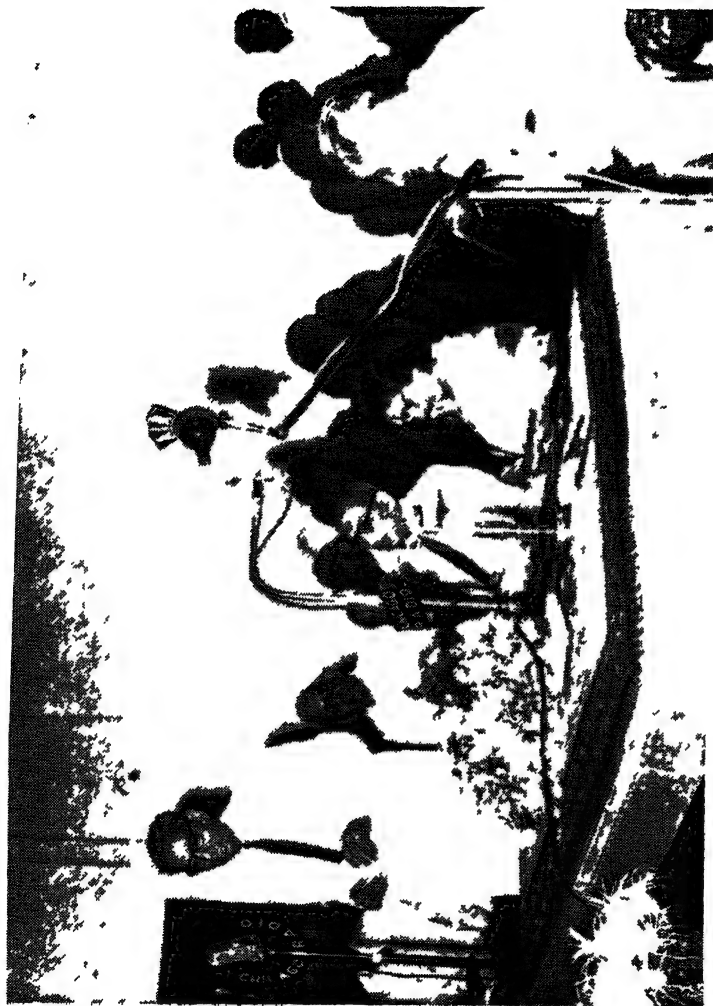
An authority on the Constitution, he stood for the flexibility of law as a powerful instrument to render socio-economic justice In his opinion, the law was not rigid on the basis of the Fundamental Principles Opposed to theory of the basic structure' of the Constitution laid down by the Supreme Court in 1973, he was of the view that no constitutional amendment could be invalidated on this ground even if it encroached on the Fundamental Principles

On a reference to the Supreme Court by the President Gajendragadkar spelled out in uneqivocal terms the distribution of power among the three chief organs of democracy, namely the Executive, the Legislature and the Judiciary"

—From "Blitz" dated June 20, 1981

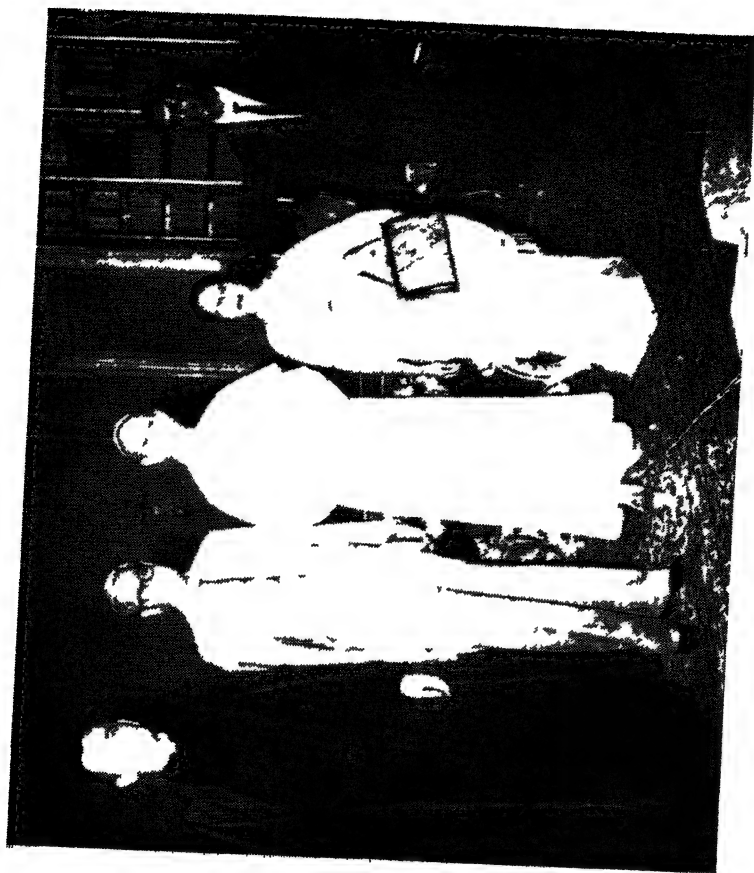
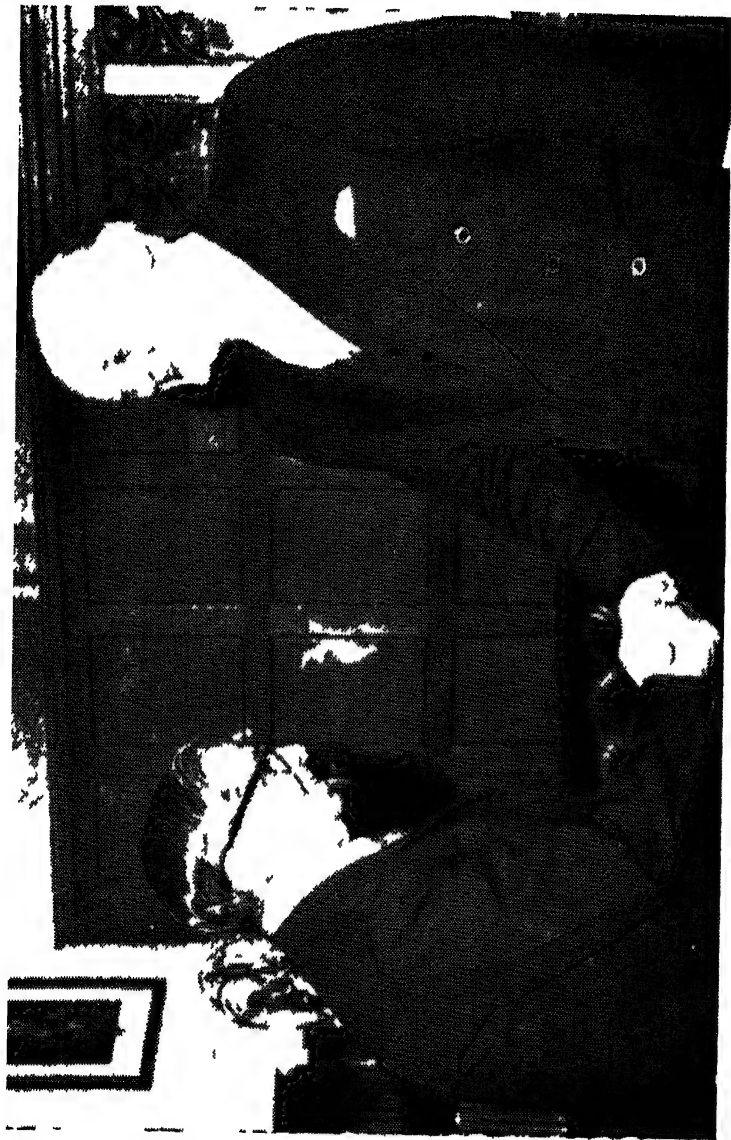
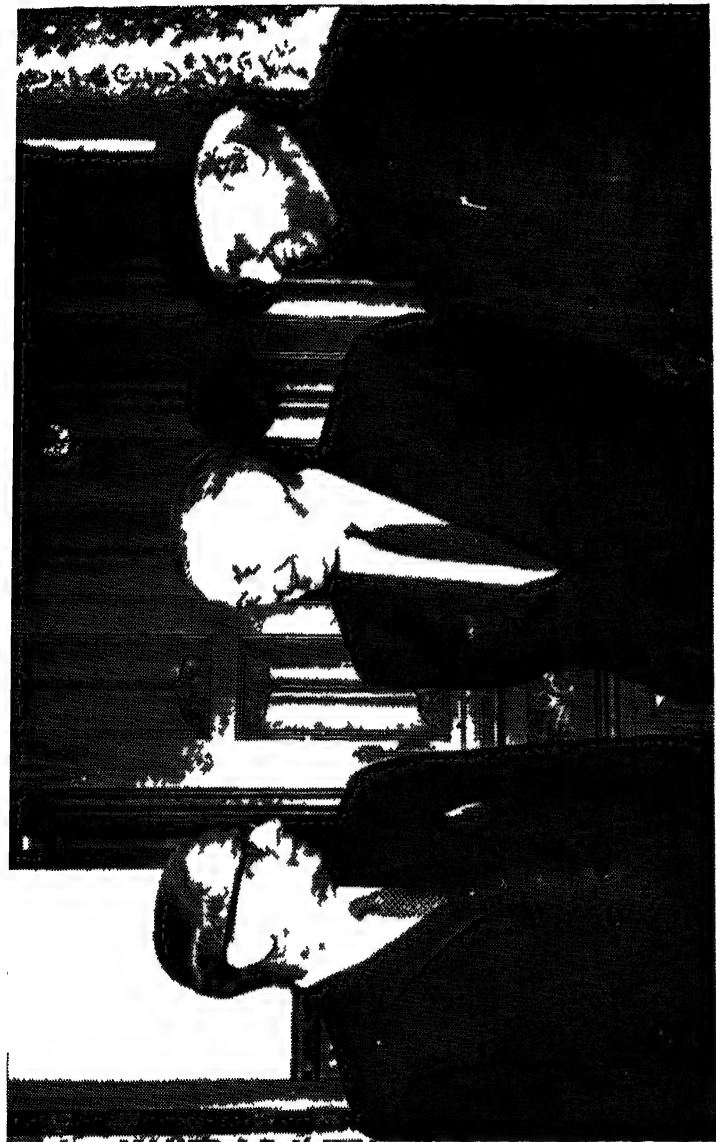
With Shri M C Chagla, Acting Governor of Bombay, 1956

With Maharshi Annasaheb Karve at a function of the Pune Municipal Corporation 1960
At the extreme left in white Jodhpuri dress is Shri S V Bhave, the then Municipal Commissioner
On the right of Annasaheb Karve is Shri V B Gogate, the then Mayor of Pune

Speaking on the occasion of unveiling the statue of Dr B R Ambedkar (seen in the background) in Pune, 1960

One son of Satara (Shri Y B Chavan) felicitating another (Shri Gajendragadkar), on the latter becoming the Chief Justice of India

Speech at the reception in Cowasji Jehangir Hall that led to some uproar among the U P legislators
From right to left · *Shri S K Patil Smt Gajendragadkar, Chief Justice H K Chainani, Dr R V Sathe*

With Smt Indira Gandhi, Minister for Information and Broadcasting, 1964

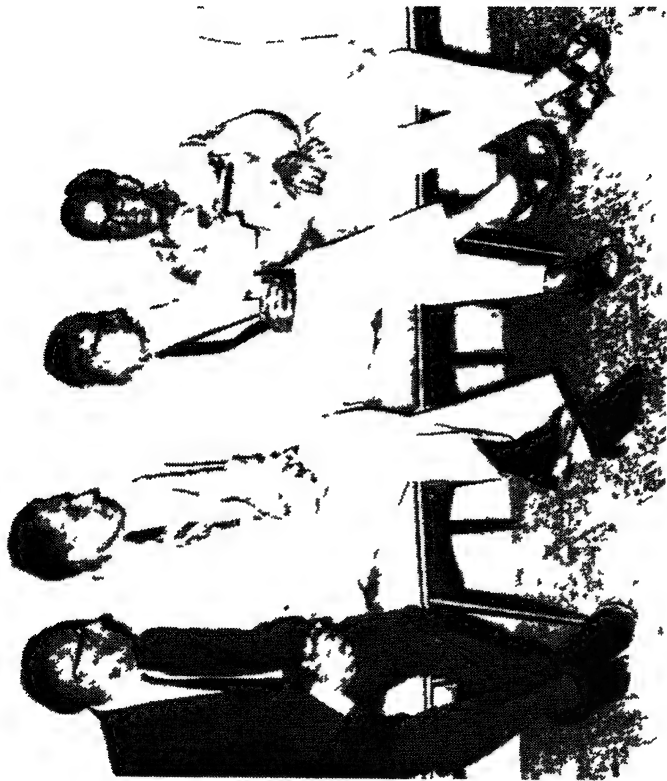
At Jaipur with Dr Mohansingh Mehta, Vice-Chancellor of Rajasthan University, and Dr Sampurnanand, the Governor of Rajasthan

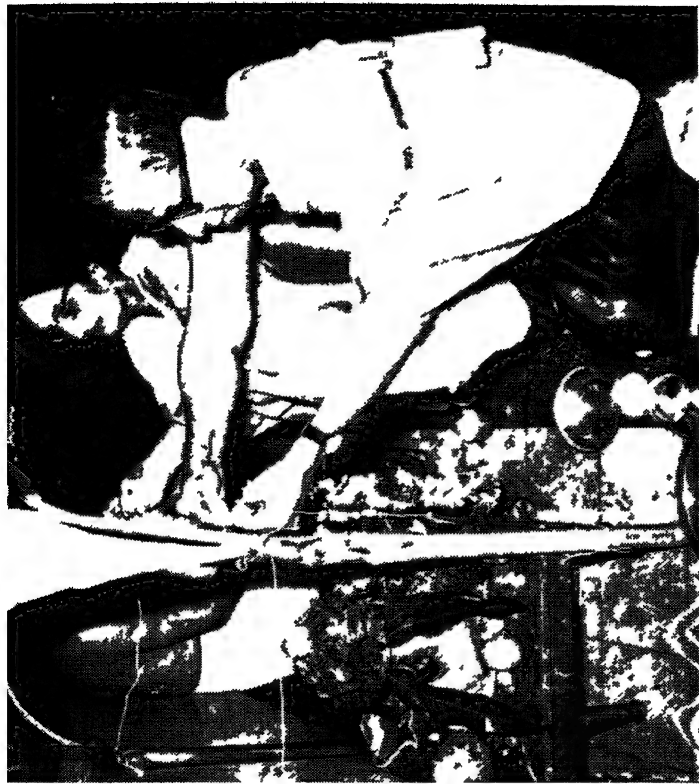
With Dr S Radhakrishnan

With the Pope, 1965

With Lord Gardiner, Lord Chancellor of U K , 1965

With Mr Harold Wilson, Prime Minister of U K, and Dr Jivraj Mehta, High Commissioner for India in U K, 1965

At Moscow, as the leader of the Delegation of Indian Jurists, 1965

From right to left *Mr Anestas Mikoyan, the First Dy Prime Minister of U S S R, Smt Gajendragadkar, Shri Gajendragadkar, Shri C K Daftary, Shri M C Setalvad*

At a cocktail party at Nairobi (At extreme left is Shri Prem Bhatia, the then High Commissioner for India at Kenya)

With daughters Asha and Sharad

In an informal chat, 1975

From left to right · *Justice N D Kamat (now Lok Ayukta of Maharashtra), Justice N B Naik, Shri Gajendragadkar and Justice Y V Chandrachud (now Chief Justice of India)*

Performing Satya Narayan Puja with Smt Shalini on the latter's 61st birthday
11th February, 1969

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